

Exhibit B

ROGER DOUGLAS BOSLEY

April 6th, 2017

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DECKERS OUTDOOR CORPORATION,
Plaintiff.
vs.
AUSTRALIAN LEATHER PTY LTD.
Defendant.

Case No. 16-ev-03676

VS.

AUSTRALIAN LEATHER PTY LTD.)
Defendant.)

DEPOSITION

OF

ROGER DOUGLAS BOSLEY

On Thursday, April 6, 2017

Commencing at 9.46a.m.

Taken at:

Room 1205, Level 12, Law Society NSW
170 Phillip Street, Sydney, NSW, Australia

CONFIDENTIAL TRANSCRIPT

Reported by: Jim Berman CSR

DTI Global
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Phone: Int + 61-2-9225-3500

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Exhibit 21 Document titled "Comfort Plus Pty Ltd",
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P R O C E E D I N G S

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VIDEOGRAPHER: This is videotape number 1 in the deposition of Roger Bosley in the matter of Deckers Outdoor Corporation v Australian Leather Pty Limited and Or, in the United States District Court for the Northern District of Illinois, Eastern District. The case number is 1:16-cv-03676 and today's date is the 6th of April 2017 and the time on the video monitor is 9.46am.

The videographer today is Wayne Matthews and this video deposition is taking place at Level 12, 170 Phillip Street in Sydney, Australia. Will counsel please identify yourselves and state whom you represent?

MR M BAGLEY: My name is Mark Bagley, I am with the law firm of Tolpin & Partners in Chicago, Illinois, in the United States, and I'm representing the defendants Australian Leather and Mr Adnan Oygur. With me is my co-counsel and Australian attorney Mr Michael Terceiro.

MR K RAYGOR: Kent Raygor of Sheppard Mullin Richter & Hampton in Los Angeles, California, here for plaintiff Deckers Outdoor Corporation, and to my right is - go ahead.

MS L EGAN: Lisa Egan, from K&L Gates in Melbourne, Australian counsel for Deckers.

VIDEOGRAPHER: The court reporter today is

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09:48:21 1 Jim Berman of DTI Australia. Would the court reporter
09:48:25 2 please swear in the witness.

09:48:38 3 ROGER REGINALD BOSLEY, having been duly affirmed,
4 testified as follows:

09:48:40 5 MR BAGLEY: Before I get started with some
09:48:41 6 questions for the witness, I have one or two housekeeping
09:48:44 7 matters I would like to go over and to discuss on the
09:48:46 8 record, perhaps, with Mr Raygor. First of all, we want
09:48:49 9 to make clear that we have - in the case the judge has
09:48:53 10 entered a confidentiality order or a protective order and
09:48:57 11 based on this, we are going to have the court reporter
09:49:01 12 and the videographer treat the transcript and video of
09:49:07 13 today's deposition as confidential pursuant to this order
09:49:15 14 during that time. Kent, did you have anything to add
09:49:18 15 about the protective order?

09:49:19 16 MR RAYGOR: Do you want to just add it as an
09:49:21 17 exhibit now for the three Australian depositions we'll be
09:49:26 18 doing?

09:49:27 19 MR BAGLEY: We can do that. I will go ahead and
09:49:29 20 mark --

09:49:30 21 MR RAYGOR: I have extra copies, if you need it.

09:49:32 22 MR BAGLEY: Okay. No, I have a number of copies
09:49:33 23 here.

24 MR RAYGOR: Okay.

09:49:34 25 MR BAGLEY: But I will go ahead and mark this as

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09:49:35 1 defendant's deposition exhibit number 14 and I will give
09:49:39 2 it to the court reporter later. I don't need to show it
09:49:44 3 anyone, but this is a copy of the amended confidential
09:49:47 4 order in this case.

09:49:51 5 (Exhibit 14 marked for identification)

09:49:51 6 MR BAGLEY: I'll just leave that right there.

09:49:53 7 MR RAYGOR: And I would just add, as sort of a
09:49:56 8 matter of housekeeping, that pursuant to paragraphs 4,
09:49:59 9 5(a) and 5(b)(2) of the Protective Order - which is
09:50:03 10 Exhibit 14?

09:50:04 11 MR BAGLEY: It is Exhibit 14.

09:50:06 12 MR RAYGOR: That nothing that transpires here today
09:50:07 13 at this deposition can be shared with either of the
09:50:12 14 witnesses for tomorrow. They are not permitted under
09:50:16 15 the Protective Order to hear what goes on today,
09:50:19 16 questions asked, answers given.

09:50:21 17 MR BAGLEY: I will check the Protective Order on
09:50:23 18 that, but I will take your word for it at this point and
09:50:26 19 we'll look into that. One other sort of a housekeeping
09:50:30 20 matter - well, actually, I will make that - instead of a
09:50:33 21 housekeeping matter, I will make that some of my early
09:50:37 22 questions to the witness.

23 EXAMINATION BY MR BAGLEY:

09:50:38 24 Q. Can I ask the witness to state your name for
09:50:39 25 the record, please?

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09:50:40 1 A. Yes. Roger Douglas Bosley.

09:50:42 2 Q. Mr Bosley, you may have heard the videographer
09:50:45 3 state that we're sitting here today in Sydney, Australia,
09:50:48 4 and you may have noticed that this is going to be,
09:50:50 5 basically, an American-style deposition. My question to
09:50:54 6 you, since we are sitting in Australia, is, basically,
09:50:58 7 are you here voluntarily today?

09:51:00 8 A. Yes, I am, yes.

09:51:01 9 Q. Has there been any governmental authority or
09:51:04 10 court order asking or telling you to be here?

09:51:07 11 A. No, not at all.

09:51:09 12 Q. Thank you. Have you ever been deposed before?
09:51:13 13 Have you ever given a deposition before?

09:51:15 14 A. No, I haven't, not a deposition, no. I've been
09:51:18 15 a witness in a court case, but not a deposition as such.

09:51:23 16 Q. Okay. Were you - have you been a witness in
09:51:25 17 more than one court case?

09:51:31 18 A. Yes. Yes.

09:51:32 19 Q. How many times have you been a witness in a
09:51:34 20 court case?

09:51:35 21 A. Two, three times.

09:51:37 22 Q. Two or three times?

09:51:38 23 A. Yes, two or three times.

09:51:40 24 Q. Okay. What was the most recent one? For the
09:51:42 25 most recent time you were a witness, what was the case

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09:51:44 1 about?

09:51:46 2 A. It was a case of two companies in the sheepskin
09:51:52 3 industry that were - one company had supplied ugg boots
09:52:03 4 to a retail store and the retail store wouldn't accept
09:52:07 5 them because they believed that the quality wasn't there
09:52:12 6 as per the sample that they saw originally and they
09:52:19 7 decided that they wouldn't pay and they wanted to return
09:52:22 8 the stock, and so the manufacturing company sued the
09:52:28 9 retailer and I was asked to come in as an expert witness,
09:52:36 10 no longer being directly involved in the industry any
09:52:41 11 more, but I was considered to be an expert witness in the
09:52:47 12 quality of the skins because of the company that I owned
09:52:51 13 originally, and so it was a matter of going through and
09:52:58 14 considering what I believed to be of an acceptable
09:53:04 15 quality and a non-acceptable quality and divided the
09:53:09 16 boots in that order.

09:53:10 17 Q. Well, thank you, that was a very complete, at
09:53:14 18 least to my ears, explanation. Did that court case have
09:53:17 19 any issues about brands of boots or trademarks on boots?

09:53:20 20 A. No. No.

09:53:21 21 Q. Okay. Was that as a witness during an actual
09:53:26 22 court proceeding?

09:53:27 23 A. Yes.

09:53:28 24 Q. You said you were a witness in a case?

09:53:29 25 A. Yes. Yes.

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09:53:30 1 Q. Okay. So this might be a little different in
09:53:31 2 that it is an American-style deposition.

09:53:34 3 A. Yes. Yes, that's fine.

09:53:34 4 Q. And so I'd just like to say some things about
09:53:36 5 it a little bit.

09:53:37 6 A. Yes.

09:53:37 7 Q. The first thing is actually pretty simple. If
09:53:40 8 at any time this morning you'd like us to take a break,
09:53:43 9 we can certainly do that, if you need to use the
09:53:45 10 rest room, get something to drink, or whatever.

11 A. Yes.

09:53:47 12 Q. I would only ask that, you know, when we stop,
09:53:50 13 if there's a question - or when we think about stopping,
09:53:50 14 if there's an outstanding question to you, I would ask
09:53:52 15 that you answer that first.

09:53:53 16 A. Yes, sure.

09:53:55 17 Q. And once you've answered the question, we can
09:53:56 18 certainly take a break, we'll go off the record --

19 A. Yes.

09:53:59 20 Q. -- and do whatever we need to do.

21 A. Yes.

09:54:01 22 Q. So if you see a need to take a break, please
09:54:03 23 let us know.

09:54:04 24 A. Yes, that's fine.

09:54:05 25 Q. I am going to be asking you a number of

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09:54:07 1 questions today. If anything I say is unclear to you,
09:54:10 2 either because I'm mumbling or I'm just asking a bad
09:54:14 3 question, please stop and tell me that --

4 A. Yes.

09:54:16 5 Q. -- and I will try to say it again or I'll try
09:54:18 6 to ask a better question.

09:54:19 7 A. Right.

09:54:20 8 Q. So I'd just encourage you to do that and I will
09:54:22 9 try to make myself as clear as possible. From time to
09:54:25 10 time you may hear Deckers' counsel, Mr Raygor, make some
09:54:29 11 objections for the record, that is a part of the process,
09:54:32 12 but I would say unless you hear a specific instruction
09:54:35 13 not to answer the question, I would ask that you go ahead
09:54:37 14 and attempt to answer the question if at all possible.

09:54:40 15 A. Right.

09:54:41 16 Q. It may be - it may that he'll make an objection
09:54:43 17 and I'll reconsider and ask a slightly different
09:54:46 18 question, but in that case you'd go ahead and answer the
09:54:49 19 question that I asked, I suppose.

09:54:50 20 A. Right.

09:54:51 21 Q. But unless you hear otherwise, I would ask that
09:54:53 22 you go ahead and answer the question that was asked.

09:54:55 23 A. Yes.

09:54:57 24 Q. You are doing this already, but I would
09:54:58 25 encourage you to make any of your responses verbal

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09:55:01 1 because we're making not only a video record but a
09:55:04 2 written transcript record, so if you nod your head, or
09:55:07 3 something like that, that won't show up on the written
09:55:10 4 transcript, so I'd ask you to make all your responses
09:55:12 5 verbal whenever possible.

09:55:13 6 A. Yes, right.

09:55:15 7 Q. Are you taking any medication or do you have
09:55:17 8 any medical condition that would affect your ability to
09:55:20 9 answer questions today?

09:55:22 10 A. Not really. I am a diabetic but it doesn't
09:55:29 11 seem to affect me or anything.

09:55:31 12 Q. Okay. All right. I'm not asking you to go
09:55:33 13 through the whole medication you take.

14 A. No. Yes.

09:55:34 15 Q. I'm just asking you if it would affect your
09:55:36 16 ability to answer questions?

09:55:37 17 A. No, it wouldn't, no.

09:55:38 18 Q. Thank you. Have you had any alcoholic
09:55:42 19 beverages in the past six hours?

09:55:44 20 A. No.

09:55:44 21 Q. When were you born?

09:55:46 22 A. Redacted

09:55:50 23 Q. And where were you born?

09:55:52 24 A. In Adelaide, Ashford in Adelaide.

09:55:56 25 Q. In Adelaide. For those of us from the

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09:55:58 1 United States --

09:55:59 2 A. South Australia.

09:56:00 3 Q. It's in South Australia?

09:56:01 4 A. Yes, South Australia, yes.

09:56:03 5 Q. Where do you currently live?

09:56:04 6 A. In South Australia, in Adelaide, the suburb of
09:56:07 7 Morphett Vale.

09:56:09 8 Q. Okay. What's your current address?

09:56:11 9 A. 46 Ringwood, R-I-N-G-W-O-O-D, Ringwood Road,
09:56:19 10 Morphett Vale, two words.

09:56:22 11 Q. Have you lived in the Adelaide area your entire
09:56:25 12 life?

09:56:26 13 A. Yes. Yes.

09:56:28 14 Q. What is the highest level of education that you
09:56:31 15 received?

09:56:34 16 A. I hold a degree in business administration
09:56:40 17 which I got at the University of South Australia.

09:56:45 18 Q. What year did you receive that degree?

09:56:53 19 A. '66.

09:56:55 20 Q. In Australia is that considered a graduate
09:56:57 21 degree or an undergraduate degree, to the extent you
09:57:01 22 know?

09:57:01 23 A. I believe an undergraduate degree, yes.

09:57:06 24 Q. Let me ask it this way. Did you get a
09:57:09 25 different undergraduate degree before that Master of

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09:57:12 1

Business?

09:57:13 2

A. No.

09:57:13 3

Q. Or the business degree?

09:57:14 4

A. No.

09:57:15 5

Q. Okay.

09:57:15 6

A. No.

09:57:20 7

Q. Do you currently have an employer or do you own

09:57:22 8

a business right now?

09:57:23 9

A. No, not at all, I'm retired.

09:57:25 10

Q. You're retired?

09:57:26 11

A. Yes.

09:57:27 12

Q. What was your most recent job that you held

09:57:28 13

before you retired?

09:57:31 14

A. I had a screen-printing business that I ran and

09:57:39 15

owned for 15 years and I sold that to my head printer and

09:57:52 16

worked on for another two years to help him establish

09:57:58 17

the - he knew how to print but he didn't know how to run

09:58:03 18

a business, so I stayed on for two years and so I've

09:58:06 19

retired completely six years ago, yes.

09:58:11 20

Q. So you sold that business approximately eight

09:58:13 21

years ago?

09:58:13 22

A. Yes.

09:58:14 23

Q. Thank you. Starting after you got your degree

09:58:19 24

in 1966, if it's not going to take too long, could we go

09:58:25 25

through a brief chronology of the jobs that you've had?

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1 A. The jobs.

09:58:28 2 Q. Let me ask it this way. What was the first job
09:58:31 3 you had after getting your degree in 1966?

09:58:34 4 A. Well, I worked for an engineering company as a
09:58:39 5 sales engineer while I was doing the degree at night.

09:58:43 6 Q. Okay. Sure.

09:58:43 7 A. And I worked for them from the time I left
09:58:47 8 school up until I was about, oh, 26, 27, so it was about
09:59:02 9 14, 15 years I worked for them, and then I left there to
09:59:08 10 start my own business in a similar product to what they
09:59:17 11 were selling.

09:59:18 12 Q. What product was that?

09:59:20 13 A. Engineering tools, like conveyor belting,
09:59:25 14 hydraulic sills, this type of thing.

09:59:28 15 Q. Do you remember about what year - I'm trying to
09:59:31 16 get grounded in the chronology here. About what year did
09:59:35 17 you start your own business?

09:59:40 18 A. '71, 1971.

09:59:44 19 Q. And how long did you run - you started the
09:59:48 20 business. How long did you work in that business?

09:59:52 21 A. Well, we kept going - I took an agency on, a
10:00:01 22 firm in New Zealand selling sheepskin products which
10:00:04 23 included car seat covers, ugg boots, slippers, that type
10:00:11 24 of thing, and we managed to get in to the major stores in
10:00:20 25 Adelaide selling car seat covers and the New Zealand

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10:00:25 1 company tried to do the dirty on us and say, "We're going
10:00:31 2 to take your customers over and we'll pay you
10:00:33 3 commission." I said, "No. No. No. It can't be that
10:00:37 4 hard, I'll buy a knife and a sewing machine and we'll
10:00:42 5 make them ourselves." And that's how I got into the
10:00:45 6 sheepskin industry.

10:00:46 7 Q. Okay, yes, and I definitely want to talk about
10:00:48 8 that --

9 A. Yes.

10:00:48 10 Q. -- but I'm just trying to get things straight
10:00:50 11 in my mind.

10:00:50 12 A. Yes.

10:00:51 13 Q. So you were running - you had an engineering
10:00:54 14 tool business for a while?

10:00:55 15 A. Yes.

10:00:55 16 Q. And my question - I guess my question is how
10:00:56 17 long were you working on or actively running that
10:00:58 18 business?

10:01:00 19 A. Doing that. Only for about another six months
10:01:03 20 after we just started making the sheepskin --

21 Q. Okay.

10:01:09 22 A. Yes.

10:01:10 23 Q. All right, then let's try to place that. Do
10:01:12 24 you remember about when, what year you started with the
10:01:17 25 sheepskin business?

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10:01:17 1 A. That was '73, yes.

10:01:23 2 Q. Okay. Let me jump back to your engineering
10:01:26 3 tools business one more time.

4 A. Yes.

10:01:28 5 Q. Did that business have a name?

10:01:29 6 A. That was called Bosley Hicks Trading Company;
10:01:36 7 I had a partner in that.

10:01:38 8 Q. Okay.

10:01:38 9 A. And he eventually took that over and I took the
10:01:41 10 sheepskin business over.

10:01:43 11 Q. Okay. Your sheepskin business --

12 A. Yes.

10:01:45 13 Q. What was the name of that business?

10:01:47 14 A. Initially, it was called B&H Manufacturing
10:01:52 15 Pty Limited and then after about six months we changed it
10:01:58 16 to Comfort Plus Australia Pty Limited.

10:02:06 17 Q. Okay. And you said you started off the
10:02:08 18 sheepskin business working as an agent for a different
10:02:11 19 company?

10:02:11 20 A. Yes.

10:02:12 21 Q. What was that company?

10:02:15 22 A. Zettlock.

10:02:16 23 Q. How do you spell that?

10:02:17 24 A. Z-E-T-T-L-O-C-K.

10:02:23 25 Q. And about how long did the B&H or Comfort Plus

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company act as an agent for Zettlock?

A. About 18 months I think it would be, yes, 12 to 18 months.

Q. And just to summarise and make sure I understand it, at about the end of that 12 or 18 months you cut off business relations with Zettlock?

A. Yes, yes, we went and bought a sewing machine and a sharp knife and some skins and the companies we were dealing with, the major stores, the Myers and John Martins and Harris Scarfes of this world, they were quite happy to - these people had no patent on their designs of their seat covers, so we just copied that and packaged them in our own product and they were quite happy to ship from a Zettlock brand to a Comfort Plus brand.

Q. Okay. About how long was the Comfort Plus business - let me ask it this way. How long were you involved with the Comfort Plus business?

A. 12 years.

Q. Does the Comfort Plus business still exist today?

A. No.

Q. No?

A. It shut down. The family that I sold it to, the Zukers, in Melbourne, they chose - because I had

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10:04:01 1 indicated to them I wasn't going to continue on past the
10:04:07 2 three years that I had agreed to their father, even
10:04:10 3 though he'd died, I had agreed for the three years,
10:04:15 4 I worked for the three years, they wanted me to stay on
10:04:19 5 and run it and I refused. There was too much
10:04:24 6 interference with that family, so I refused, and so they
10:04:29 7 decided to put it on the market and they sold it to a
10:04:32 8 New Zealand company who worked it for 18 months and then
10:04:36 9 shut it down.

10:04:38 10 Q. Okay. Look, I'm going to definitely come back
10:04:40 11 to the Comfort Plus company --

10:04:42 12 A. Yes.

10:04:43 13 Q. -- but I'm just trying to get a little bit of
10:04:45 14 an overview first.

15 A. Yes.

10:04:46 16 Q. You said you worked for about 12 years with the
10:04:49 17 Comfort Plus company?

10:04:50 18 A. Yes.

10:04:50 19 Q. Do you remember the year when you stopped
10:04:54 20 working for it?

10:04:56 21 A. '82 - it would be '84.

10:04:59 22 Q. 1984?

10:05:00 23 A. Yes.

10:05:00 24 Q. And just briefly, what did you do starting in
10:05:03 25 1984 for a job or a business?

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10:05:05 1 A. In 1984? I had a year off.

10:05:08 2 Q. Okay.

10:05:08 3 A. I deserved it.

10:05:11 4 Q. Fair enough. Fair enough.

10:05:12 5 A. Yes.

10:05:13 6 Q. What was the next job you had after that, job
10:05:15 7 or business?

10:05:16 8 A. I - a friend of mine had a screen-printing
10:05:18 9 business and he was a very good screen printer but a very
10:05:28 10 poor manager, so I was brought in to - because my prime
10:05:35 11 background in the - was accounting, that was my
10:05:40 12 background.

10:05:42 13 Q. Okay.

10:05:43 14 A. So I moved into that business and because he
10:05:47 15 was short of money, I invested some money in the business
10:05:51 16 and took half the business.

10:05:55 17 Q. Was that the same screen-printing business that
10:05:56 18 we talked about a little earlier?

10:05:58 19 A. Yes. Oh, no.

10:06:00 20 Q. No. Okay.

10:06:01 21 A. No. No. Sorry, no, that one - that one
10:06:06 22 closed, closed down. We --

10:06:09 23 Q. Just so we can talk about it, what was the name
10:06:11 24 of your friend's screen-printing business where you
10:06:13 25 started in around 1985?

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10:06:15 1 A. Screen - Screen Graphics.

10:06:21 2 Q. And how long were you with Screen Graphics?

10:06:25 3 A. About three years.

10:06:30 4 Q. If I'm doing my math right, that would put us
10:06:33 5 in around 1988?

10:06:34 6 A. Yes.

10:06:35 7 Q. Is that correct?

10:06:35 8 A. Yes.

10:06:35 9 Q. And what did you do after you left
10:06:37 10 Screen Graphics?

10:06:40 11 A. We actually shut that company down and I formed
10:06:46 12 a company of my own and continued to do screen printing
10:06:52 13 until the day I retired.

10:06:54 14 Q. Okay. Thank you. I think that gives me a good
10:06:57 15 overview of some of the things you've done.

10:06:59 16 A. Yes, background, yes.

10:07:01 17 Q. So let's go back to - I would like to go back
10:07:03 18 to the Comfort Plus business.

10:07:04 19 A. Yes.

10:07:07 20 Q. We talked about a number of dates in there, but
10:07:12 21 let me see if I can ask a slightly cleaner question. Do
10:07:16 22 you remember the year when you started the B&H business
10:07:21 23 which became Comfort Plus?

10:07:23 24 A. Yes.

10:07:25 25 Q. Do you remember the exact - what year it was,

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10:07:28 1 at this point?

10:07:28 2 A. I'm pretty sure it was '73 or '74, yes.

10:07:34 3 Q. All right. You mentioned car seat covers. Was
10:07:35 4 that the first product that the Comfort - I'm going to
10:07:39 5 call it the Comfort Plus business.

10:07:41 6 A. Yes. Yes.

10:07:41 7 Q. I realise that it was, it had a slightly
10:07:43 8 different name at the beginning, but --

10:07:43 9 A. Yes. Yes.

10:07:44 10 Q. For the Comfort Plus business was the first
10:07:46 11 product you did car seat covers?

10:07:49 12 A. Yes, it was. The product was called - just to
10:07:53 13 clarify that, the product was always called Comfort Plus.
10:07:57 14 Even when we were working under B&H Manufacturing it was
10:08:01 15 still called - the product was Comfort Plus but we were
10:08:04 16 B&H Manufacturing.

10:08:05 17 Q. Okay.

10:08:06 18 A. We subsequently changed that to Comfort Plus
10:08:09 19 Australia Pty Limited, if I can just clear that up.

10:08:15 20 Q. Did Comfort Plus move into other types of
10:08:19 21 products, move into making other types of products?

10:08:22 22 A. Yes, it did. Around about that time Australian
10:08:27 23 manufacturing of cars tended to move from vinyl seats and
10:08:34 24 people bought sheepskin seat covers because vinyl seats
10:08:40 25 were very hot in Australia and when --

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10:08:44 1 Q. Everywhere there's the sun, I would imagine.

10:08:48 2 A. Exactly. And --

10:08:48 3 Q. Okay, go on, I didn't mean to interrupt you.

10:08:50 4 A. On very hot days you'd find that sales of

10:08:54 5 sheepskin seat covers went through the roof. On a very

10:08:58 6 hot day, because people sit in their car they'd burn

10:09:01 7 their backside and they'd think of, "Well, let's get that

10:09:04 8 and stop that." Anyway, the car manufacturers, in their

10:09:06 9 wisdom, decided that they would no longer make them in

10:09:10 10 vinyl because that was the case, that people burn in

10:09:14 11 them, and they started making them in fabric. So

10:09:17 12 I quickly saw that we needed to - that was our main

10:09:21 13 product that we were - we were making slippers and a few

10:09:28 14 things like that, but basically we needed to pursue

10:09:34 15 something else because car seat covers were going to take

10:09:40 16 a dive, we realised that quickly, and so we looked at the

10:09:46 17 ugg boot market and - which was gaining momentum at that

10:09:53 18 stage, but it was very much a - it was done - it was a

10:10:02 19 backyard industry, a cottage industry.

10:10:04 20 Q. About what time frame was that that you started

10:10:07 21 getting into or started making ugg boots?

10:10:10 22 A. Ugg boots? Oh, '74 - about '76, yes, 1976.

10:10:23 23 Q. How did you find out about ugg boots as

10:10:26 24 something that might make sense to manufacture?

10:10:31 25 A. Well, in a marketing exercise you always look

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1 at, you know, what age group are wearing these things and
2 how quickly they're going to wear them out and - I mean,
3 if it was for people, if it was going to be an age group
4 of 60-plus years of age, you wouldn't bother too much
5 because they'll buy one pair and it will last them the
6 rest of their life, but the industry was - the people
7 that were wearing them were between the age of about 12
8 to 25, that was the big age, and that would be 80,
9 90 per cent of the market, and so - and they would wear
10 out one or two pair a year, so that's - so we pursued
11 that and we appointed - made some samples, appointed
12 agents in every state in Australia and the agents were
13 selling them for us and the orders were coming in quite
14 good.

15 Q. All right. Let me --

16 A. So we pursued that side of the business.

17 Q. Okay. Okay. Thank you. I may ask something
18 that we all in the room would know already, but what are
19 ugg boots made out of?

20 A. Sheepskin.

21 Q. So was it a natural - let me ask this.

22 A. Yes.

23 Q. Did Comfort Plus make any products that weren't
24 made out of sheepskin?

25 A. No, not at all, everything was made out of

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10:12:10 1 sheepskin, yes.

10:12:11 2 Q. So when you were looking around for other
10:12:13 3 products, were you looking around for other products that
10:12:15 4 were made out of sheepskin?

10:12:17 5 A. Oh, of course, yes, because that's what we had
10:12:19 6 all the machinery for, mmm.

10:12:21 7 Q. You've used the term "ugg boots" a couple of
10:12:24 8 times.

10:12:24 9 A. Mmm.

10:12:25 10 Q. I'm going to ask how you understand, what you
10:12:28 11 understand that to mean and let me just start out by
10:12:32 12 asking do you understand that to be a brand name?

10:12:34 13 A. No, never, it was - it has always been a
10:12:37 14 generic term in Adelaide. We - sorry, not in Adelaide,
10:12:41 15 in Australia, it has always been a generic term. People
10:12:45 16 refer to them when they're - oh, you know, even friends
10:12:52 17 today say to me, "Can you still get us some ugg boots?",
10:12:55 18 you know. "Yeah, yeah, I can get you some ugg boots"; so
10:12:58 19 it's a generic term in --

10:13:01 20 Q. Okay. Yes, thank you for that.

10:13:04 21 A. Yes.

10:13:05 22 Q. And, you know, lawyers throw around terms like
10:13:09 23 "generic term" and "trademark" and they have legal
10:13:12 24 meanings. I'd like to maybe take a step back and think
10:13:15 25 about the concepts beneath that so to kind of leave off

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10:13:17 1 the legal angle of things.

10:13:19 2 A. All right.

10:13:20 3 Q. You know, when you use a word to describe
10:13:26 4 something it can mean several things. It can mean what
10:13:29 5 the item actually is, or one other option is it could
10:13:32 6 tell you where the item came from, if it's a manufactured
10:13:36 7 item who manufactured it, or it could have other
10:13:38 8 meanings?

10:13:38 9 A. Yes.

10:13:38 10 Q. A good example is if I put a piece of fruit in
10:13:42 11 front of you and said, "This is an apple", I would say
10:13:46 12 the word "apple" might be able to tell you what the
10:13:50 13 actual piece of fruit is, but if I put a Smartphone in
10:13:52 14 front of you, or a laptop computer, and I said, "This is
10:13:55 15 an Apple", "Apple" might tell you who manufactured that
10:13:59 16 item.

10:13:59 17 A. Right.

10:14:00 18 Q. Or it could mean something else. So when you
10:14:02 19 use the term "ugg boot" you refer to, I assume, some
10:14:05 20 boots you were manufacturing, do you consider that to be
10:14:09 21 telling what the item is, or telling what it came from,
10:14:12 22 or maybe something else?

10:14:15 23 A. Well, I guess --

10:14:16 24 MR RAYGOR: Objection. Vague as to time and this
10:14:20 25 is your direct examination: you're leading.

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10:14:23 1 MR BAGLEY: I thank you for that.

2 BY MR BAGLEY:

10:14:26 3 Q. Could you answer the question?

10:14:28 4 MR RAYGOR: Sorry.

5 THE DEPONENT. Yes.

10:14:29 6 MR RAYGOR: If I make objections --

7 THE DEPONENT. Yes. Yes. Yes.

10:14:31 8 MR RAYGOR: -- it's for the record.

10:14:33 9 THE DEPONENT: Right. Okay.

10:14:34 10 MR RAYGOR: You can listen to them and you can
10:14:36 11 ignore them.

12 THE DEPONENT: Yes. No, fine.

10:14:37 13 MR RAYGOR: Mark might change his question, but go
10:14:38 14 ahead.

10:14:43 15 THE DEPONENT: Yes, okay. Well, my understanding
10:14:45 16 of the word "ugg" boot, as close as I understand it,
10:14:54 17 there was a surfer in Adelaide, he was a professional
10:15:01 18 surfer, and he was making boots out of sheepskin to keep
10:15:06 19 the surfers' feet warm and it was - they were very rough,
10:15:09 20 they were just sewn together and that, but they served
10:15:14 21 the purpose and they were keeping their feet warm, and
10:15:18 22 this surfer was John Arnold, and he also had a shop that
10:15:23 23 he made gear in and he started to improve the look of the
10:15:29 24 boot a bit. To my understanding how the name came about,
10:15:37 25 and I got this from John Arnold himself, he said, "My

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10:15:41 1 mother was in the shop one day and she looked at the boot
10:15:44 2 and she said, 'Oh, what an ugly boot"', and that's how
10:15:48 3 the name ugg boot came about and it was referred to as
10:15:51 4 that as long as I ever remember.

5 BY MR BAGLEY:

10:15:53 6 Q. Thank you for that. I'm not going to make any
10:15:57 7 more testimony about that.

10:15:58 8 A. Yes.

10:15:59 9 Q. But let's talk about the time frames. When you
10:16:02 10 started making this boot that you describe as an
10:16:07 11 ugg boot, and let me anchor that, was that in around 1975
10:16:13 12 or 1976?

10:16:15 13 A. Yes.

10:16:16 14 Q. Okay. Do you know if the term "ugg boot" had
10:16:18 15 been in use before you started making your boots?

10:16:21 16 A. Yes. Yes.

10:16:23 17 Q. Do you know if other - you mentioned
10:16:25 18 John Arnold. Did John Arnold have his own company making
10:16:29 19 ugg boots, to your knowledge?

10:16:31 20 A. He had us his own - he had a shop. He was like
10:16:34 21 all the others that were making them, they were really a
10:16:36 22 cottage industry type thing. They might be making
10:16:40 23 10 pairs a week or something like that, you know.

10:16:44 24 Q. Okay. So is it correct that, to your
10:16:46 25 knowledge, there were multiple different companies making

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10:16:50 1 ugg boots --

10:16:51 2 A. Oh, yes.

10:16:52 3 Q. -- before you got into making them?

10:16:54 4 A. Yes, sure.

10:16:55 5 Q. What did your ugg boots look like when you
10:16:57 6 started making them in 1975-76?

10:17:01 7 A. Much what they would be today. It was still
10:17:06 8 with a conventional shoe made from a shoe last. There's
10:17:13 9 various types - I mean, you can have ugg boots with a
10:17:17 10 front panel or you can have them where the stitches are
10:17:23 11 along the centre of the boot and at the sides, there's
10:17:27 12 several ways. Primarily, it was - we didn't change it
10:17:33 13 much. Over all the years we were making them we didn't
10:17:36 14 change, we made sure that every type was available,
10:17:40 15 whether it would be a lace-up boot for the longer ones,
10:17:45 16 that's what people preferred, but basically they stayed
10:17:50 17 the same, mmm.

10:17:51 18 Q. You had mentioned that these boots are made out
10:17:52 19 of sheepskin. Was sheepskin the only major thing that
10:17:58 20 the boot was made of? Were there any parts of the boot
10:18:02 21 that weren't sheepskin?

10:18:03 22 MR RAYGOR: Vague and ambiguous as to what you mean
10:18:04 23 by "major", and compound.

24 BY MR BAGLEY:

10:18:06 25 Q. Let me ask this question.

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10:18:07 1 A. Yes.

10:18:09 2 Q. Were there any parts of the ugg boots that you
10:18:11 3 made that were not made out of sheepskin?

10:18:14 4 A. Well, the sole for instance.

10:18:15 5 Q. What was the sole made out of?

10:18:17 6 A. The sole was made out a synthetic material
10:18:21 7 called EVA, EVA standing for ethyl vinyl alcohol, usually
10:18:29 8 sourced in Singapore and places like that, not made in
10:18:34 9 Australia.

10:18:35 10 Q. Other than the sole was the rest of the boot
10:18:37 11 made out of sheepskin?

10:18:42 12 A. You had - depending on the thing, there was
10:18:45 13 parts of suede, suede leather used to support the heel
10:18:51 14 and in the case of lace-ups down the side and the only
10:18:59 15 other thing you could say that wasn't sheepskin would be
10:19:02 16 the, what they called the inner sole and that's the -
10:19:07 17 it's a tough material used in all shoes, it's to hold the
10:19:12 18 shape of the shoe, and the sheepskin sock fits to that
10:19:22 19 insole and the insole is the thing that sticks to the
10:19:24 20 sole, mmm. Is that clear or --

10:19:28 21 Q. I think it's probably clear enough.

10:19:30 22 A. Yes.

10:19:30 23 Q. I'm trying to get - yes, I think that gives a
10:19:34 24 general sense of what I was going after, thank you.

10:19:36 25 A. Yes, mmm.

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10:19:36 1 Q. Okay. Let's talk about when you first started
10:19:40 2 manufacturing ugg boots, or at least the early years.
10:19:46 3 I'm going to make an assumption that you had a sort of
10:19:48 4 factory where they were produced; is that correct?

10:19:50 5 A. Oh, yes, yes.

10:19:51 6 Q. Did you have a factory where you made
10:19:53 7 ugg boots?

10:19:53 8 A. Yes. Yes.

10:19:54 9 Q. Okay. When the ugg boots left your factory
10:19:57 10 during those early years, did they have any kind of
10:20:00 11 labels or tags on them?

10:20:01 12 A. Yes, they did. There was a law in Australia
10:20:05 13 that you - any footwear, whether it be shoes or ugg boots
10:20:11 14 or anything else, you had to (a) name where it was made
10:20:18 15 and (b) what the upper was made of and what the sole was
10:20:25 16 made of. For some reason that was the legal requirement,
10:20:32 17 so we did that. It was - we didn't call it sheepskin
10:20:37 18 upper, we called it leather and that covered everything,
10:20:40 19 whether it was suede or whether it was sheepskin or
10:20:43 20 whatever, and sheepskin, after all is said and done
10:20:47 21 anyway, is a leather, yes.

10:20:50 22 Q. Okay. So you just described some of the
10:20:53 23 governmental requirements.

10:20:54 24 A. Yes.

10:20:55 25 Q. I was asking if there were any tags or labels.

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10:20:57 1 What kind of tag or label would be actually on the boots?

10:21:02 2 In the sense of saying --

10:21:02 3 A. Oh, on the boot itself --

4 Q. Yes.

10:21:03 5 A. -- or do you mean on the sole?

10:21:05 6 Q. Yes. I'm asking more about the type of tag or
10:21:08 7 label. Describe, like, where was it? Was it something
10:21:10 8 that was hanging from a piece of string from the boot or
10:21:13 9 was it stuck to the boot or was it sewed to the boot in
10:21:17 10 some way?

10:21:17 11 A. No. The only advertising as such was the bag
10:21:21 12 in which it was packed, the plastic bag, and that had a
10:21:26 13 bit about the ugg boots. I can't remember what, exactly
10:21:31 14 what it said, but it was to do with a description of the
10:21:35 15 boot and what the advantages were and the fact that we
10:21:39 16 only used a certain grade of sheepskin for our boots.

10:21:45 17 Q. Okay. I'll probably come back to those plastic
10:21:48 18 bags --

10:21:48 19 A. Yes.

10:21:48 20 Q. -- but I was really asking you about, you said
10:21:50 21 there were labels or tags on the boots, is that correct?

10:21:53 22 A. On the, on the sole.

10:21:54 23 Q. It was on the sole?

10:21:55 24 A. On the sole, yes.

10:21:56 25 Q. Okay. What kind of tag was it? How was it --

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10:22:00 1 A. It was a self-adhesive vinyl and it stuck to
10:22:04 2 the EVA sole, yes.

10:22:07 3 Q. Thank you, I think that's near perhaps where I
10:22:10 4 was trying to get.

10:22:10 5 A. Yes.

10:22:11 6 Q. Do you remember, you know, what it said on the
10:22:12 7 stickers?

10:22:14 8 A. It said "Comfort Plus". It said that it was a
10:22:19 9 leather upper and a synthetic sole, and the size.

10:22:29 10 Q. Okay. During that early time period were there
10:22:32 11 any other kind of labels or tags on the boots when they
10:22:35 12 left your factory?

10:22:40 13 A. No, not really, no, other than the plastic bag
10:22:44 14 they were packed in.

10:22:46 15 Q. Okay. I'm going to ask about the plastic bag.

10:22:48 16 A. Yes, right, okay.

10:22:49 17 Q. Right now I'm talking about labels and tag, I
10:22:52 18 just want you to understand that?

10:22:52 19 A. No, not to the boot itself, no, that was the
10:22:54 20 only label.

10:22:55 21 Q. Okay.

22 A. Yes.

10:22:55 23 Q. And I did specify that early period. Would
10:22:58 24 your answer change in any of the later time frames that
10:23:01 25 you were involved with Comfort Plus?

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10:23:04 1 A. No, because, primarily, you must remember, we
10:23:09 2 were a manufacturer and wholesaler. Our retail friends
10:23:14 3 that bought them really didn't want our advertising
10:23:18 4 plastered all over the boot because they were going to
10:23:20 5 put it in their shop and if their customers saw it in the
10:23:24 6 shop, they could soon trace it back to Comfort Plus and
10:23:31 7 try and buy them direct, that type of thing, mmm.

10:23:35 8 Q. Okay. Earlier you said you worked with
10:23:37 9 Comfort Plus until around 1984?

10:23:40 10 A. Yes.

10:23:42 11 Q. In the time right up until that period was
10:23:46 12 there still just the heel sticker on the boots --

10:23:49 13 A. Yes.

10:23:49 14 Q. -- when they left the factory?

10:23:51 15 A. Yes. Yes. Yes. Yes.

10:23:55 16 Q. Okay. Thank you. Okay, and let's --

10:23:55 17 MR RAYGOR: That mischaracterizes the evidence.

10:23:58 18 The testimony was the heel, I think you said "sole".

10:24:01 19 MR BAGLEY: I apologise if I said "heel" instead of
10:24:03 20 "sole".

21 THE DEPONENT: Sorry, I'm --

10:24:04 22 MR RAYGOR: Mr Bosley, I thought that Mr Bagley
10:24:05 23 mischaracterized what you had said. He said "heel" but
10:24:09 24 I thought you earlier said it was on the sole.

10:24:12 25 THE DEPONENT: Oh, you're quite right, yes, it was

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10:24:14 1 the sole.

2 BY MR BAGLEY:

10:24:14 3 Q. Thank you.

4 A. Yes, yes, yes, yes, you're right.

10:24:15 5 Q. I do want to get it right, if I misspeak with

10:24:18 6 an answer, and I thank Mr Raygor for that correction.

10:24:21 7 I would like to talk about the plastic bags.

10:24:23 8 A. Yes.

10:24:25 9 Q. Can you explain - well, did you say that the
10:24:28 10 boots were placed in a plastic bag before they left the
10:24:31 11 factory?

10:24:32 12 A. Yes.

10:24:33 13 Q. Did that start in around the 1976 time period?

10:24:36 14 A. Yes, we did it right from the very beginning.
10:24:38 15 In the beginning, it was done with a clear plastic bag
10:24:43 16 and then as we increased the size of the business, of
10:24:48 17 course, we started using printed plastic bags and did a
10:24:52 18 bit of advertising spiel on them and that type of thing,
10:24:56 19 mmm.

10:24:56 20 Q. When you started having printing on the bags,
10:24:58 21 what were some of the things that were printed on them?

10:25:10 22 A. Well, I guess in the - we would say something
10:25:14 23 about the manufacturing and that we used only the best
10:25:25 24 available sheepskins. There were other sheepskins that
10:25:29 25 you wouldn't make ugg boots out of because you'd no

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10:25:33 1 sooner put them on and you'd put your toe through the
10:25:37 2 hole, and that's because Australian skins primarily are
10:25:41 3 not really the best skins for ugg boots, to be honest.
10:25:47 4 We have a grass-seed problem with our animals, the sheep,
10:25:52 5 the grass seeds go right into their wool and pass right
10:25:56 6 through the animal into the inside of the animal, so,
10:26:02 7 therefore, you have a hole in the sheepskin, so when the
10:26:11 8 sheep is slaughtered, the skin goes in and it's tanned
10:26:15 9 and those holes and marks are like scars and so we had to
10:26:27 10 source skins that didn't have these scars.

10:26:32 11 Q. Okay. Thank you. If I could jump back to
10:26:35 12 the plastic bags a little bit.

10:26:37 13 A. Yes, yes, sure.

10:26:37 14 Q. You described some of the words on there. Did
10:26:39 15 the plastic bags have the words "Comfort Plus" on them?

10:26:43 16 A. Yes, yes, they did.

10:26:44 17 Q. Were the words "Comfort Plus" in larger font
10:26:47 18 than other things or about the same sized font?

10:26:50 19 A. Yes, they were in predominant - in a
10:26:53 20 predominant position on the --

10:26:57 21 Q. Okay. Did the plastic bags have the words
10:27:00 22 "ugg boots" or "ugg" or "uggs".

10:27:04 23 A. Yes.

10:27:04 24 Q. Which of those, as much as you can remember?

10:27:07 25 A. Well, "ugg boots", yes, yes, and that's when it

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10:27:11 1 went on to give an advertising spiel of, "Our ugg boots
10:27:15 2 are made from selected sheepskins", blah, blah, blah, you
10:27:19 3 know, that type of thing, because there was nothing else
10:27:25 4 different in our boots than anybody else's. The way it
10:27:32 5 was made, I believe we made it a little better, probably
10:27:35 6 because we had the machinery for it, but in real terms,
10:27:39 7 the skin was the thing that made the difference, that we
10:27:44 8 only used a certain grade of skins.

10:27:50 9 Q. All right. You have been talking --

10:27:52 10 A. So that they were the things that we mentioned
10:27:53 11 on the plastic bag, you know.

10:27:56 12 Q. Okay. All right, thank you. Let's stick
10:28:01 13 with the plastic bag just a little bit longer.

10:28:03 14 A. Yes.

10:28:04 15 Q. The words "Comfort Plus" on the plastic bag --

10:28:07 16 A. Yes.

10:28:08 17 Q. -- as you see it, did that tell you what the
10:28:10 18 product was or where the product came from, or something
10:28:13 19 else?

10:28:17 20 A. Not really. I guess once we got larger in
10:28:21 21 size, I mean, in later years, you know, we employed -
10:28:28 22 when I sold the business there were 75 employees there
10:28:32 23 and they were turning over 4.6 million a year. You then
10:28:39 24 could afford to - the name Comfort Plus meant something
10:28:45 25 in the industry because you had spent this time and

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10:28:52 1 effort in manufacturing.

10:28:57 2 Q. Okay. Let's move on to - you have been
10:29:02 3 talking about your factory?

10:29:04 4 A. Yes.

10:29:04 5 Q. And did Comfort Plus ever have any retail
10:29:07 6 stores?

10:29:07 7 A. Yes, they did, in Adelaide only.

10:29:10 8 Q. About how many stores?

10:29:11 9 A. We had four stores in Adelaide, yes.

10:29:20 10 Q. Percentage wise, how much of your company or
10:29:23 11 how much of your sales were through those retail stores
10:29:26 12 as opposed to wholesaling?

10:29:28 13 A. Oh, only about 10 or 15 per cent at the most,
10:29:31 14 yes.

10:29:32 15 Q. And just so I'm making sure I'm not making any
10:29:34 16 assumptions, was the entire rest of your sales through
10:29:37 17 wholesaling?

10:29:38 18 A. Yes. Yes, it was.

10:29:40 19 Q. When I say "your sales", I mean Comfort Plus
10:29:42 20 sales?

10:29:43 21 A. Yes. Yes. The shops were named separately
10:29:49 22 so that there was no confusion. The shops we called -
10:29:55 23 the retail shops were called The Woolshed.

10:29:59 24 Q. Were all four of them called the same thing?
10:30:01 25 Were all four of them each called The Woolshed?

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10:30:04 1 A. Yes, all called The Woolshed, yes.

10:30:08 2 Q. Were they - you said in Adelaide. Were they
10:30:10 3 all in the same metropolitan area?

10:30:11 4 A. There was one in the city, opposite the Hilton,
10:30:14 5 and there was one at Glandore under our factory, our
10:30:21 6 initial factory, and another one at Port Adelaide and
10:30:29 7 another one at Glenelg.

10:30:34 8 Q. Okay. I'd like to ask a little bit about the
10:30:37 9 volume of ugg boots that your company produced and
10:30:40 10 I realise that could have changed over time?

10:30:42 11 A. Yes.

10:30:43 12 Q. When you started producing in, say, the 1976
10:30:45 13 time frame --

10:30:46 14 A. Yes.

10:30:46 15 Q. -- about - how would you describe - I'll let
10:30:49 16 you pick the time frame, but what was the volume of boots
10:30:51 17 you were doing? So pick the time frame, if you could
10:30:55 18 tell me, in terms of, "We did X amount per month",
10:30:58 19 "We did X amount per week"?

10:30:59 20 A. Well, at the end - we began by doing around
10:31:04 21 about 500 pair a week --

10:31:06 22 Q. Okay.

10:31:06 23 A. -- in '75 or whatever: 500 pair a week. That
10:31:16 24 built up to, when I sold the business, we were doing
10:31:18 25 5,000 pair a week.

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10:31:20 1 Q. And just so I'm remembering, you sold the
10:31:23 2 business in around 1982, is that what you said?

10:31:26 3 A. Yes. Yes.

10:31:27 4 Q. Okay. Looking back on our discussion so far,
10:31:34 5 I think we have been talking mostly about Australia.
10:31:36 6 Did you ever sell any ugg boots to or in the
10:31:39 7 United States?

10:31:40 8 A. Yes. Yes. I went on a sales trip there in
10:31:47 9 '79 to try and establish sales primarily, at that stage,
10:31:52 10 for car seat covers, that was what we were pushing, but
10:31:58 11 we also pushed the range of footwear, including
10:32:05 12 ugg boots. I came up against - I called several stores,
10:32:11 13 Penneys being one of them. That sticks in my mind, the
10:32:18 14 way they marketed their shops. They had a sign out the
10:32:21 15 front that said how many stores they had, but it was
10:32:28 16 written in chalk and while I was there they changed it
10:32:31 17 twice and I thought, "Man, that's marketing", you know.
10:32:37 18 Anyway, so we went to places like Penneys. We were told
10:32:43 19 the same story. The Americans don't really go for
10:32:48 20 natural products. They've been brought up with synthetic
10:32:54 21 salts, synthetic sugar, synthetic milk, why would they
10:33:00 22 buy synthetic sheepskin, and they - to be honest, at that
10:33:05 23 stage, I think on my trip there I found out they only had
10:33:08 24 50 million sheep in the whole country and they had
10:33:14 25 300 million people. Australia only had 20 million

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10:33:18 1 people at that stage and they had 150 million sheep, so
10:33:23 2 I knew that they weren't going to be in the market.
10:33:27 3 Sheepskin products weren't going to be a big thing for
10:33:31 4 them because they didn't have the natural product to
10:33:34 5 start with, but that was the answer I was getting, so I
10:33:40 6 was getting nowhere, and a friend of mine that was
10:33:43 7 working over there at that stage, we got to talking and
10:33:47 8 he said, "Why don't you open your own shops? I've got a
10:33:51 9 green ticket, I'm here in America, let's do it." So we
10:33:56 10 opened four shops and there was the one that, I'm not
10:34:05 11 sure what the suburb was called but it was close to
10:34:07 12 downtown Los Angeles, there was Santa Barbara, there was
10:34:18 13 Thousand Oaks and Woodland Hills.

10:34:20 14 Q. Okay, thank you. I would like to follow up
10:34:21 15 with a few more questions about that process.

10:34:23 16 A. Yes.

10:34:24 17 Q. You mentioned - well, first, let's talk about
10:34:26 18 the time frame. You mentioned you opened was it four
10:34:29 19 shops in the United States?

10:34:30 20 A. Yes.

10:34:30 21 Q. Did they all open at about the same time?

10:34:34 22 A. Oh, pretty much, within three or four months,
10:34:36 23 yes.

10:34:36 24 Q. And do you remember what year that was?

10:34:41 25 A. I'm pretty sure it was '80, 1980.

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10:34:45 1 Q. 1980?

10:34:47 2 A. 1980, yes.

10:34:49 3 Q. You mentioned a friend with a green - I might
10:34:52 4 say a Green Card. You said a green --

10:34:53 5 A. A Green Card - that's permission to work in
10:34:56 6 America.

7 Q. Okay.

10:34:56 8 A. Is that still the case? I don't know.

10:34:59 9 Q. Well, I just wanted to make sure I knew what
10:35:02 10 you were talking about.

11 A. Yes.

10:35:03 12 Q. You had a friend who had permission. Was he
10:35:06 13 Australian?

10:35:07 14 A. Well, you couldn't go over there and work.
10:35:08 15 I had a lot of problems and I had to form a company over
10:35:11 16 there. I had a lot of problems with them accepting my
10:35:15 17 involvement, you might add, as a foreigner.

10:35:21 18 Q. Okay, I see. This friend, what was his name?

10:35:24 19 A. Garren McPhee.

10:35:27 20 Q. Was that - is that "Garren" with a "G"?

10:35:31 21 A. "G", yes.

10:35:32 22 Q. Could you spell that for me and for the record?

10:35:34 23 A. G-A-R-R-E-N, McPhee, M-C-P-H-E-E.

10:35:44 24 Q. And what did Garren do for your company or your
10:35:50 25 shops?

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10:35:52 1 A. Well, he pretty much - I had to leave it with
10:35:56 2 him and he kept in touch with me by phone or by telex,
10:36:02 3 and he would come back and say, "I can get a shop here",
10:36:08 4 "I can get a shop there", and, "Give me the reasons", and
10:36:14 5 we would agree to it and he'd just go and do it. He had
10:36:17 6 permission at the bank over there to sign cheques and
10:36:20 7 everything else, so, mmm.

10:36:22 8 Q. You may have touched on this a little bit.
10:36:25 9 You said one store was near downtown Los Angeles?

10:36:29 10 A. Yes.

10:36:29 11 Q. Downtown. Were the other stores in the
10:36:31 12 Los Angeles area?

10:36:32 13 A. Well, yes, Los Angeles is a big place, as you
10:36:36 14 know. Thousand Oaks, I don't know how far that is from
10:36:42 15 the city, I think it's - it was about an hour, an hour
10:36:45 16 and a half in a car, and then Santa Barbara was further
10:36:49 17 on again, and Woodland Hills was closer to LA.

10:36:55 18 Q. Okay. Were those retail stores called
10:36:59 19 Comfort Plus?

10:37:01 20 A. No. No.

10:37:01 21 Q. What were they called?

10:37:03 22 A. They had various names. The sheepskin shop,
10:37:10 23 I think one we called The Woolshed, and I really can't
10:37:15 24 think what the other two were. I --

10:37:18 25 Q. But did they each have different names?

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10:37:19 1 A. Yes, yes, they did.

10:37:22 2 Q. What did --

10:37:23 3 A. We did that for a purpose. The purpose was
10:37:26 4 that if we decided to franchise later on, those names
10:37:31 5 could be used and - I mean, the - it was endless the
10:37:36 6 possibilities over there, absolutely endless, you know.

10:37:41 7 Q. Okay. These retail shops, what did they sell,
10:37:44 8 what kind of products?

10:37:46 9 A. They sold the whole range of our products -
10:37:50 10 coats, ugg boots, moccasins, slippers, seat covers,
10:37:59 11 sheepskin seat covers, pretty much the whole range, yes.

10:38:03 12 Q. When you say "the whole range", was that the
10:38:05 13 whole range of things that were being manufactured by
10:38:07 14 Comfort Plus?

10:38:08 15 A. Yes. Yes.

10:38:09 16 Q. Of that range in your United States shops, do
10:38:13 17 you have a sense of what percentage was, say, footwear?

10:38:16 18 A. Footwear was about 70 per cent and ugg boots
10:38:23 19 was probably 60 per cent of that 70, yes.

10:38:28 20 Q. Okay.

21 A. So that --

10:38:29 22 Q. Let me be clear on the math now.

10:38:31 23 A. Yes. Yes.

10:38:32 24 Q. When you say 60 per cent of the 70, there are
10:38:36 25 two ways you can look at it.

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10:38:38 1 A. 70 per cent of the turnover would have been in
10:38:41 2 footwear.

10:38:43 3 Q. All right. So the 60 per cent that you're
10:38:46 4 saying were ugg boots, is that 70 per cent of your total
10:38:49 5 turnover or - excuse me, let me ask you the question.
10:38:52 6 For the ugg boots, was that 60 per cent of your total
10:38:57 7 store turnover or 60 per cent of your footwear sales?

10:39:02 8 A. 60 per cent of the total sales.

10:39:03 9 Q. The total store turnover?

10:39:08 10 A. Yes.

10:39:08 11 Q. Okay. At the time you were selling these
10:39:13 12 boots in the United States at your stores were they
10:39:16 13 labelled or packaged any differently from what we were
10:39:19 14 talking about earlier?

10:39:22 15 A. No, exactly the same. They still had all our
10:39:28 16 "Comfort Plus" all over them and this sort of thing.
10:39:31 17 There was - we didn't change. When they ordered stuff
10:39:37 18 it was taken straight out of our stock. We held
10:39:41 19 substantial stocks of sheepskin and they just ordered
10:39:46 20 what they wanted for over there and were shipped over
10:39:50 21 there in exactly the same containers, et cetera, that we
10:39:56 22 did to anywhere else, mmm.

10:40:02 23 Q. Were your United States shops successful?

10:40:04 24 A. They were very successful. Their average
10:40:09 25 sales were about \$15,000 each shop per week.

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1 Q. Per week?

2 A. Per week.

3 Q. Okay. That's - okay. Okay. Then let's -
4 let me see if I can do a little estimating here.
5 Actually, let me ask - let me ask you first, do you have
6 a sense of about how many pairs of ugg boots each store
7 sold, say, per week?

8 A. Not in terms of numbers, no. You've got to
9 remember in those days it was - this was all pre-computer
10 days and, you know, records, stock records and that sort
11 of thing, just, you know --

12 Q. Okay. Well, let me see if I can come at it
13 maybe another way. Do you remember what the range of
14 retail prices, or if there was one retail price, that you
15 sold the ugg boots at your United States stores?

16 A. If it was a short ugg boot, an ankle, what they
17 would call an ankle ugg boot, from memory, I think they
18 sold for around \$50. If they were a knee-high, they'd
19 be maybe \$150 and if they were a lace-up ugg boot, at
20 usually \$200 or close to there, mmm.

21 Q. But would you sell, like, different numbers of
22 boots depending on - different types of ugg boots?
23 Scratch that question. Would it be a conservative
24 estimate to say that of the ugg boots you sold in the
25 United States --

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10:42:09 1 MR RAYGOR: Objection. Leading.

2 BY MR BAGLEY:

10:42:11 3 Q. Do you have an average price that you sold all
10:42:14 4 of your ugg boots, in your mind?

10:42:16 5 A. No, sorry.

10:42:17 6 Q. Okay, fair enough. How long were those US
10:42:21 7 shops open, and you can go shop by shop if it helps?

10:42:29 8 A. Look, I really find it hard to remember
10:42:34 9 exactly, but I think it was somewhere between 18 months
10:42:38 10 and two years. I know I had four, five trips over
10:42:43 11 there in that time trying to sort them out.

10:42:50 12 Q. You said earlier that they were pretty
10:42:51 13 successful. Why did you close them?

10:42:55 14 A. Well, as I said, pre-computer days, very hard
10:43:01 15 to control and, to be quite frank, they were stealing
10:43:07 16 from me.

10:43:07 17 Q. Who was "they"?

10:43:08 18 A. The staff.

10:43:11 19 Q. How did you find out about that?

10:43:15 20 A. Well, it doesn't take too long if you're an
10:43:20 21 accountant to work out that there's stuff missing and
10:43:23 22 then I had a lot of friends over there that I'd made in
10:43:30 23 the places that I stayed and they used to report on,
10:43:35 24 saying that, you know, they're down at the flea markets
10:43:39 25 on the weekends selling and there was no record of that

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10:43:46 1 in there, and, in fact, one - the head girl, I was told,
10:43:51 2 had opened a fifth shop up in Big Bear, in the mountains,
10:43:57 3 and I think that really was the living end of it and I
10:44:02 4 went up there and found a shop opened in the name of
10:44:07 5 Gayle McMurray, who was the girl who was in charge of
10:44:11 6 shifting stock around to the different shops, so she
10:44:16 7 shifted it around to a fifth shop, which was hers, all my
10:44:21 8 stock.

10:44:22 9 Q. And you had not known about that?

10:44:24 10 A. No. No.

10:44:26 11 Q. Did you take a trip to the United States when
10:44:28 12 you found out about this?

10:44:30 13 A. Yes. Yes.

10:44:34 14 Q. And what time frame was that? Was that right
10:44:36 15 before you closed the stores?

10:44:38 16 A. A couple of months before, yes, yes.

10:44:45 17 Q. How did the time when you closed the stores
10:44:49 18 relate in time to when you sold your interest in the
10:44:53 19 Comfort Plus business?

10:44:58 20 A. Well, it was getting - yes, it was getting
10:45:00 21 close to it, yes, yes, yes.

10:45:05 22 Q. Getting close to it --

10:45:07 23 A. And the people that were buying, the Zukers,
10:45:10 24 of course, Charlie didn't really want the shops in the
10:45:15 25 United States anyway, and when he heard that they were

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10:45:18 1 stealing, he said, "Get rid of them," so in 10 days -
10:45:25 2 you know, "Only in America", as they say. In 10 days
10:45:29 3 I went over there, sold three shops and shut one down and
10:45:32 4 walked home with quite a bit of money in the briefcase.

10:45:37 5 Q. If that's the way things were done at the time.

10:45:39 6 A. Yes, that's right, yes.

10:45:43 7 Q. Okay. Just to bring us full circle, was that
10:45:54 8 in 1982?

10:46:00 9 A. Yes.

10:46:01 10 Q. And also, to bring us full circle, am I
10:46:03 11 remembering correctly that you stayed on as an employee
10:46:05 12 of Comfort Plus for a number of years after that?

10:46:11 13 A. Yes, I ran - I stayed on as managing director
10:46:13 14 for three years.

10:46:15 15 Q. Thank you.

10:46:15 16 A. Charlie Zuker, who bought the business, died
10:46:18 17 about three months after we completed it. He died in my
10:46:21 18 home of a heart attack.

19 Q. Right.

10:46:24 20 A. And we had nothing in writing, it was a shake
10:46:27 21 of the hand. I could have walked away from it. I didn't
10:46:32 22 because I'm ethical and so I stayed on and worked with
10:46:39 23 his sons for as long as I could and that completed the
10:46:44 24 three years, yes.

10:46:47 25 Q. Okay. Thank you. So I would like to jump in

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10:46:49 1 time to something a little more recent. In the past
10:46:54 2 couple of weeks have you received any telephone calls
10:46:59 3 from anyone claiming to represent Deckers about, talking
10:47:03 4 about these issues?

10:47:04 5 A. Yes, yes, twice, two calls.

10:47:07 6 Q. Two separate calls?

10:47:08 7 A. Said that my name was on the witness list, or
10:47:11 8 something or other, and was ringing me to ask why I was
10:47:17 9 doing it and warning me that I could be on the stand for
10:47:26 10 quite a long time and, you know, really think about it,
10:47:30 11 and then another call came - I'm not sure if it was three
10:47:37 12 weeks, four weeks, four weeks later, something like that.

10:47:41 13 Q. Okay. Let's go back to that first call. Do
10:47:44 14 you know who the person was who was talking to you?

10:47:46 15 A. No, I don't.

10:47:47 16 Q. How did the person identify themselves?

10:47:51 17 A. They said that they were from the lawyers
10:47:54 18 representing Deckers, which rang a bell with me, and
10:47:59 19 I said, "Oh, fair enough", because, firstly, I thought it
10:48:04 20 was from, someone from your side and then - and made it
10:48:10 21 clear he was from Deckers, "Yes, right, okay", and he
10:48:15 22 just wanted to know a bit about my involvement. I told
10:48:20 23 him about the shops we had in America, et cetera,
10:48:23 24 et cetera, and our manufacturing, you know, I didn't hold
10:48:29 25 anything back from him, I told him.

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10:48:31 1 Q. Okay. Was that all during the first phone
10:48:34 2 call?

10:48:34 3 A. Yes.

4 Q. Okay.

10:48:34 5 A. Yes, primarily. The second phone call was
10:48:36 6 quite short because it was a bad line and I had a lot of
10:48:39 7 difficulty in hearing, yes.

10:48:41 8 Q. Do you remember or could you tell was it the
10:48:43 9 same individual that you talked to both times on the
10:48:46 10 phone?

10:48:46 11 A. I think so, yes, yes.

10:48:50 12 Q. Okay. You said the second call was pretty
10:48:53 13 short. What did you talk about in that call?

10:49:00 14 A. I think, from memory, the same thing. He sort
10:49:02 15 of said why am I doing this and I said, "Why?" - I've got
10:49:09 16 to be honest here. I said, "Why? Because I think it's
10:49:14 17 the scam of the century".

10:49:17 18 Q. What did you mean when you said you thought it
10:49:19 19 was the scam of the century?

10:49:20 20 A. Well, the fact that somebody from America was
10:49:23 21 suing somebody from Australia for using the word ugg boot
10:49:26 22 when it was invented in Australia years and years before
10:49:32 23 it was ever legally done in America and I just can't
10:49:43 24 understand why, you know, that was my reason and my - and
10:49:48 25 the fact that I was involved fairly heavily in that

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10:49:52 1 industry, and America, you know, it was my interest to do
10:49:59 2 it.

10:50:00 3 Q. Okay. Was that the only topic you talked about
10:50:04 4 in that second conversation?

10:50:12 5 A. No. I had a - as I said, I had a lot of -
10:50:17 6 you know, there was always this question of, "Why are you
10:50:19 7 doing this?", you know.

10:50:22 8 Q. Okay, fair enough.

10:50:23 9 A. Yes.

10:50:26 10 Q. One other question I'm going to jump back to at
10:50:29 11 the very beginning of our conversation today, you
10:50:31 12 mentioned that you were - that you testified in the case
10:50:36 13 about the quality of the ugg boots?

10:50:38 14 A. Oh, yes, yes. Yes.

10:50:40 15 Q. Did you describe yourself as an expert for the
10:50:41 16 purposes of that trial, for that testimony?

10:50:44 17 A. Oh well, I think that I would consider I would
10:50:47 18 be on the - looking - because not just my involvement, we
10:50:55 19 were the biggest in Australia at that time of my
10:50:58 20 involvement and I was also on the Board of the Sheepskin
10:51:04 21 Manufacturers Association and saw everything that went
10:51:05 22 over the table there every fortnight, so I sort of really
10:51:12 23 knew what was going on, and we won the - we won every
10:51:17 24 award at their dinner for every product that we made.

10:51:21 25 Q. "We", was that being Comfort Plus?

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10:51:24 1 A. Yes.

10:51:25 2 Q. I was really asking about your testimony in
10:51:28 3 that earlier case, kind of what your role was. Let me
10:51:31 4 ask it this way. In that quality of ugg boot case were
10:51:35 5 you paid for your testimony?

10:51:37 6 A. Yes, yes, I was, yes.

10:51:39 7 Q. Are you getting paid any money for your
10:51:41 8 testimony today about this case?

10:51:43 9 A. I haven't heard anything. No, as far as
10:51:50 10 I know, I was just asked to come and do it and that my
10:51:59 11 airfares and everything would be taken care of and that's
10:52:02 12 all I'm expecting.

10:52:03 13 Q. Okay.

10:52:04 14 A. Okay?

10:52:05 15 Q. I thank you very much. I'm jumping around a
10:52:09 16 little bit here, but in the past couple of weeks were
10:52:12 17 those telephone, those two telephone calls the only
10:52:15 18 contact you had with anyone who was claiming to represent
10:52:20 19 Deckers?

10:52:21 20 A. No, I did - I did have a letter that was sent
10:52:24 21 by email and that was to say that there has been a lot of
10:52:27 22 misunderstanding of what Deckers are trying to do here
10:52:32 23 and that we're not trying to break this guy in Australia
10:52:41 24 and that all they want to do is to prevent him from using
10:52:46 25 the name "ugg". I'm not sure if it said - I haven't got

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10:52:53 1 a copy of that letter.

2 Q. Well, I'm going to get to that.

10:52:54 3 A. I said it - I said it to him.

10:52:55 4 Q. I'm not going to sit here and try to ask it
10:52:58 5 from your complete memory.

6 A. No.

10:52:59 7 MR BAGLEY: So I'm going to mark an exhibit and I'm
10:53:02 8 going to mark it --

10:53:02 9 MR RAYGOR: Well, you didn't - objection. You
10:53:03 10 didn't get to the point of whether it was needed to
10:53:05 11 refresh his recollection.

10:53:08 12 MR BAGLEY: Thank you for making the objection.
10:53:11 13 Are you objecting to my presenting an exhibit?

10:53:14 14 MR RAYGOR: I just stated an objection for the
10:53:16 15 record.

10:53:17 16 MR BAGLEY: Okay, thank you very much. I'm going
10:53:19 17 to mark this exhibit as Defendant's Deposition Exhibit
10:53:23 18 number 15. Could I ask you to take a look at that.

10:53:31 19 (Exhibit 15 marked for identification)

10:53:31 20 THE DEPONENT: Yes. Yes, that's an exact copy of
10:53:33 21 what I got through the email, yes.

22 BY MR BAGLEY:

10:53:36 23 Q. Do you remember if you received this letter
10:53:38 24 before or after the two telephone calls we talked about?

10:53:43 25 A. After.

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10:53:45 1 Q. What did you personally take to be the point of
10:53:47 2 this letter?

10:53:51 3 MR RAYGOR: Objection. The letter speaks for
10:53:55 4 itself.

10:53:57 5 THE DEPONENT: Well, I don't know. What else can
10:54:07 6 you - if you - if you've read that and you're not aware
10:54:11 7 of what has gone on beforehand, or anything else, if I
10:54:17 8 was to read that I'd only think, "Oh, well, you know,
10:54:20 9 really, all they're trying to do here is to stop someone
10:54:23 10 from using the registered word ugg to American
10:54:34 11 consumers", yes.

12 BY MR BAGLEY:

10:54:35 13 Q. Okay. Thank you.

10:54:37 14 A. Yes. Yes.

10:54:38 15 Q. Actually, if we're done --

10:54:40 16 A. That is the same as the copy that I received,
10:54:42 17 the same letter.

10:54:43 18 Q. Thank you. Just when you're done with the
10:54:45 19 exhibits, let's keep all the marked ones, and by "marked"
10:54:48 20 I mean the ones with the stickers on here, just keep them
10:54:52 21 in a pile right here.

10:54:53 22 A. Yes.

10:54:54 23 Q. I'm actually going to hand you another document
10:54:58 24 which I'm going to mark as Defendant's Deposition Exhibit
10:55:01 25 number 16. If you could take a look at that and if

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10:55:08 1 I direct your attention to the upper right-hand corner.

10:55:11 2 A. Oh, yes. Yes.

10:55:14 3 (Exhibit 16 marked for identification)

10:55:15 4 MR BAGLEY: I will state for the record that

10:55:16 5 I believe this document has been produced in this case as

10:55:19 6 DEK011596.

7 BY MR BAGLEY:

10:55:26 8 Q. Do you recognise this item?

10:55:27 9 A. Yes, yes, I do.

10:55:28 10 Q. What is it? What is it?

10:55:30 11 A. Well, it's a wolf in sheep's clothing wearing
10:55:35 12 ugg boots.

10:55:37 13 Q. I do see a wolf there.

10:55:38 14 A. I don't know what our idea was at the time.

10:55:43 15 Q. Well, to answer the question --

16 A. Yes.

10:51:00 17 Q. I do see a picture of a wolf here. Is this an
10:55:49 18 advertisement of some sort?

10:55:51 19 A. Yes, it is.

10:55:52 20 Q. Okay.

10:55:52 21 A. We used that in several advertising. We didn't
10:55:56 22 spend a lot of money on advertising, to be honest, about
10:55:59 23 \$3,000 a year on Yellow Pages and that was about it,
10:56:03 24 really. We didn't do television or anything like that,
10:56:07 25 because we were primarily a wholesaler; that was our

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10:56:12 1 prime business, you know.

10:56:15 2 Q. I do notice --

10:56:16 3 A. And exporter.

10:56:19 4 Q. I notice that there's a little logo that says
10:56:23 5 "Comfort Plus" here and I guess a picture of the outline
10:56:27 6 of Australia?

10:56:27 7 A. Yes.

10:56:27 8 Q. Did you use that logo at other places?

10:56:31 9 A. Yes, we did, on everything, car seat covers,
10:56:34 10 ugg boots, that was what was on the bag.

10:56:37 11 Q. And that was on the bag, that logo was on the
10:56:40 12 bag?

10:56:41 13 A. Yes, yes, yes, it was.

10:56:43 14 Q. And that was the bag we have been talking about
10:56:44 15 all morning that each pair of ugg boots went into?

10:56:47 16 A. Yes.

10:56:47 17 Q. Thank you. I probably should have asked this
10:56:50 18 at the beginning, but I think it may be clear from your
10:56:53 19 testimony, was this an ad that your company paid to have
10:56:56 20 placed somewhere?

10:56:57 21 A. Well, yes, I'm just trying to think what it's
10:56:59 22 out of. Is it --

10:57:00 23 Q. Yes. I don't know.

10:57:00 24 A. It wouldn't be Yellow Pages.

10:57:03 25 Q. Well, you know, again, maybe we are at the

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10:57:06 1 point of the document can speak for itself. I have this
10:57:10 2 document before me and, from the numbers, it has been
10:57:12 3 produced in this case.

10:57:13 4 A. Yes.

10:57:13 5 Q. But I'm just asking if you recognise it?

10:57:16 6 A. Oh, yes.

10:57:16 7 Q. And to the extent you do, just tell us what it
10:57:19 8 is. If not then --

9 A. Yes.

10:57:20 10 Q. -- we're just here to ask what you know?

10:57:25 11 A. It looks like it might have been Yellow Pages.

10:57:29 12 Q. Okay, fair enough.

10:57:30 13 A. Yes. I don't - I don't recall, yes, to be
10:57:34 14 honest, but I do recall that we've used him before.

10:57:38 15 Q. Would "him" be the --

10:57:40 16 A. Sheep in --

10:57:41 17 Q. -- drawing of the wolf?

10:57:42 18 A. Sheep in - in - sorry, a wolf in sheep's
10:57:44 19 clothing, yes, that was the --

10:57:47 20 Q. Were you personally responsible for designing
10:57:51 21 or approving ads for Comfort Plus?

10:57:54 22 A. Yes. Yes. Yes.

10:57:55 23 Q. If you could take a quick look, and I know it's
10:57:59 24 hard to read because it's a very small text, but the
10:58:03 25 small text under the words "Luxury Sheepskin Product", if

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10:58:08 1 you look at the third line - can you read that? Is that
10:58:10 2 too small for you to read?

10:58:11 3 A. No, no, that's fine.

10:58:12 4 Q. Okay.

10:58:12 5 A. I'm in the 5 per cent of my age group that
10:58:18 6 doesn't need glasses.

10:58:19 7 Q. Congratulations. If I could direct your
10:58:21 8 attention to --

10:58:22 9 A. I can see what this is now. This is a
10:58:24 10 Yellow Pages - this is - under the word, under the logo
10:58:28 11 "Comfort Plus" you will see that that lists all our
10:58:34 12 shops.

10:58:34 13 Q. Okay. And above the Comfort Plus logo can you
10:58:37 14 see some, a number of small words there?

10:58:40 15 A. Yes.

10:58:40 16 Q. What would you say those words are or
10:58:44 17 represent?

10:58:45 18 A. Oh, car seat covers and something else.

10:58:49 19 Q. I agree, some of them are a little smudged.

10:58:52 20 A. Yes, yes, they are, mmm.

10:58:53 21 Q. Even with your excellent vision, if you just -
10:58:55 22 some of the ones - let us know some of the ones you can
10:58:57 23 read?

10:58:58 24 A. Well, it shows, yes - it says ugg boots,
10:58:59 25 ugg boots, slippers, blah, blah, blah, and car seat

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10:59:01 1 covers, yes.

10:59:02 2 Q. So what do all those items have in common with
10:59:07 3 relation to Comfort Plus?

10:59:10 4 A. What do they all have in common?

10:59:12 5 Q. What do they have in common?

10:59:14 6 A. Well, they're all made, all made of sheepskin.

10:59:16 7 Q. Were they all the things that Comfort Plus
10:59:19 8 produced?

10:59:19 9 A. Yes. Yes.

10:59:21 10 Q. I was attempting not to lead you.

10:59:24 11 A. All right. Yes. No, okay. It's alluding to
10:59:27 12 all of our products that we do, yes.

10:59:29 13 MR BAGLEY: Thank you very much. Okay. Okay,
10:59:32 14 we'll move on to another exhibit now. I'm going to --

10:59:41 15 VIDEOGRAPHER: 10 minutes.

10:59:43 16 MR BAGLEY: Okay. Thank you. We might get done on
10:59:45 17 this tape. We shall see. I'm going to mark this one as
10:59:49 18 Defendant's Deposition Exhibit number 17.

19 BY MR BAGLEY:

10:59:53 20 Q. If you could take a look at that, it has
10:59:55 21 multiple pages.

10:59:56 22 A. (Shown to deponent)

11:00:04 23 (Exhibit 17 marked for identification)

11:00:04 24 Q. There are a number of things going on here, but
11:00:08 25 I will represent to you and for the record that this is

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11:00:11 1 something else that has been produced in this case and we
11:00:14 2 can - I'm not going read all the numbers.

11:00:17 3 A. No.

11:00:17 4 Q. But it has some of the attorney control numbers
11:00:21 5 or Bates numbers, as we call them, on the bottom?

11:00:23 6 A. Yes.

11:00:23 7 Q. And I'd also represent to you that they were
11:00:26 8 produced such that I believe one of the documents refers
11:00:30 9 to the other. I'm not going to testify - I'm not going
11:00:32 10 to say anything more than that.

11:00:34 11 A. No.

11:00:34 12 Q. So let me ask you - let me just direct your
11:00:37 13 attention to the third page, paragraph number 11?

11:00:47 14 A. Yes.

11:00:49 15 Q. And actually, before I do that I will - let me
11:00:53 16 start at the beginning, because we can look at this
11:00:57 17 later, but just so we get a background, if you look at
11:01:00 18 the first page. I apologise, go back to the first page.

11:01:04 19 A. Oh, right, okay, yes.

11:01:05 20 Q. The first document at least purports to be an
11:01:08 21 affidavit by a gentleman named George Reginald Burcher.
11:01:12 22 Do you happen to know George Burcher?

11:01:14 23 A. No, no, I don't.

11:01:16 24 Q. You don't know who he is?

11:01:17 25 A. No.

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11:01:18 1 MR RAYGOR: Asked and answered.

2 BY MR BAGLEY:

11:01:20 3 Q. Okay. Now, if I could direct your attention to
11:01:23 4 the third page at paragraph number 11?

11:01:32 5 A. Yes.

11:01:36 6 Q. If you could take a quick look at that
11:01:38 7 paragraph?

11:01:42 8 A. Oh, yes, yes, yes.

11:01:44 9 Q. It talks about the Trade Directory 1982 of the
11:01:47 10 Sheepskin Manufacturers and Retailers Association of
11:01:51 11 Australia?

11:01:51 12 A. Yes.

11:01:52 13 Q. Were you a part of that organisation?

11:01:54 14 A. Yes, I was, yes, I was on the original board
11:01:58 15 until I retired, mmm.

11:02:00 16 Q. Until you retired from all of your - let me
11:02:05 17 strike that and let me ask --

11:02:06 18 A. Yes.

11:02:07 19 Q. When you retired from Comfort Plus or when you
11:02:10 20 retired from all of your jobs?

11:02:12 21 A. No, just retired from Comfort Plus, as an
11:02:23 22 owner, then when I sold the business, I resigned from the
11:02:27 23 Board.

11:02:29 24 Q. Okay. Were you a member of that organisation
11:02:31 25 in 1982?

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11:02:34 1 A. I think so, yes.

11:02:35 2 Q. Okay. Could I ask you to flip about two pages
11:02:39 3 later to the first page that says "Current Membership" at
11:02:48 4 the top. And be careful because there are two pages that
11:02:50 5 say "Current Membership". I am talking about the first.

6 A. Oh, I see.

11:02:52 7 Q. And if you look way down at the bottom, it say
11:02:54 8 "DEK011524". Do you recognise this - take a look at that
11:03:04 9 page and the pages following for a minute. I will give
11:03:07 10 you a minute.

11 A. Mmm.

11:03:08 12 MR RAYGOR: While he's doing that, I will just
11:03:10 13 object that there's no indication that this is part of
11:03:13 14 the same Exhibit 17.

11:03:18 15 MR BAGLEY: Okay. And I will say for the record I
11:03:20 16 was attempting to address that earlier. I would say that
11:03:24 17 the indication - I would say that there is. It has to do
11:03:28 18 with the way it has been produced, the order in which the
11:03:32 19 control numbers appear, and the fact that paragraph 11 on
11:03:40 20 page 3 refers to it by content and we can work out beyond
11:03:48 21 that, but for the record that's what I wanted to say.

11:03:51 22 MR RAYGOR: Actually, paragraph 11 references an
11:03:52 23 Exhibit R and there's nothing that indicates an Exhibit R
11:03:55 24 here. And if you look at the - you used the word
11:03:58 25 "Bates", which I think is a trademark, you used it

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11:04:00 1 generically, so you should be careful of that, but the
11:04:04 2 production numbers are not sequential. For example, the
11:04:07 3 first page of Exhibit 17 is DEK11480 and then there's
11:04:12 4 "Current Membership" jumps to 11524 and the same thing
11:04:16 5 for the UGG production numbers.

6 BY MR BAGLEY:

11:04:24 7 Q. Okay.

8 A. Yes, we're all there.

11:04:25 9 Q. Mr Bosley --

11:04:25 10 A. Yes, we're in there.

10:51:00 11 Q. -- while we have been making some of the
11:04:29 12 objections, can I just direct your attention to the
11:04:32 13 document starting at the first page that says
11:04:37 14 "Current Membership" on it?

11:04:38 15 A. Yes.

11:04:38 16 Q. And the pages that are after that?

11:04:40 17 A. Yes.

11:04:41 18 Q. And my question is do you recognise this
11:04:43 19 document or any of these pages?

11:04:47 20 A. Well, there's - certainly Comfort Plus is in
11:04:52 21 there, also Record Leather. This was when Charlie Zuker
11:05:01 22 was alive, Comfort Plus, and it says in there that we
11:05:04 23 make ugg boots, slippers, seat covers, moccasins,
11:05:09 24 coats --

11:05:09 25 Q. Yes. I guess my question is do you recognise

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11:05:11 1 this document, do you remember this document at all?

11:05:13 2 A. This one? No, not really, no.

11:05:15 3 MR RAYGOR: Objection. Compound.

4 BY MR BAGLEY:

11:05:16 5 Q. You do not?

11:05:17 6 A. No.

11:05:18 7 Q. Okay.

11:05:18 8 A. I mean I may have had one certainly in my
11:05:25 9 involvement, but I have no files on my involvement with
11:05:29 10 the Sheepskin Manufacturers Association at all. I'm just
11:05:32 11 looking at some of these and noting how many are not
11:05:35 12 there any more, mmm.

11:05:38 13 MR BAGLEY: Okay. One more question about this -
11:05:50 14 actually, I believe we have answered that question
11:05:53 15 earlier. Okay. I actually have one other exhibit I want
11:05:58 16 to talk about, but I am informed that we are very close
11:06:00 17 to the end of the tape, so if we could go off the record
11:06:03 18 just quickly to change tapes.

11:06:04 19 VIDEOGRAPHER: Going off the record at 11.04am.
11:06:07 20 End of tape 1.

21 (A short break)

11:06:12 22 [11.04am]

11:13:53 23 VIDEOGRAPHER: Going back on the record at 11.12am.
11:13:56 24 Commencement of tape 2. Proceed.

11:13:59 25 MR BAGLEY: I have just one more exhibit I'm going

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11:14:02 1 to want to show you and I'm going to mark this as

11:14:05 2 Defendant's Deposition Exhibit number 18.

11:14:10 3 (Exhibit 18 marked for identification)

4 BY MR BAGLEY:

11:14:10 5 Q. I will ask you to take a look at that, although
11:14:14 6 I will not ask if you recognise it. Take a minute.

11:14:17 7 I would like to say for the record that I suppose counsel
11:14:19 8 and I will have some further discussions, perhaps, in the
11:14:22 9 future about whether the first page of the document, how,
11:14:26 10 if at all, it relates to the additional pages of the
11:14:29 11 document, but I will note that all of these pages were
11:14:32 12 produced by Deckers in this matter. The first page has a
11:14:39 13 control number of DEK011999. The second page has a
11:14:46 14 control number of DEK012149 and the several pages
11:14:50 15 following that are sequential after that last number that
11:14:55 16 I read. Mr Bosley, I'm not going to ask you too much
11:15:00 17 about the first page, but I would ask that you take a
11:15:03 18 look at the second page. I will represent to you - and
11:15:08 19 counsel and I can worry about exactly what this is and
11:15:11 20 what it means later, but I will represent to you that
11:15:15 21 there are a number of short discussions of things that
11:15:18 22 certain companies may have done, but without any title or
11:15:22 23 names of any of those companies. I was, I was going to
11:15:27 24 ask you if you would briefly look over that second page
11:15:30 25 and see if, in your opinion, any of these descriptions

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11:15:35 1 accurately reflected what Comfort Plus may have done?
11:15:43 2 A. Well, one here, 7th of May 1982, "This company
11:15:50 3 has recently airfreighted 1000 pairs of sheepskin ugg
11:15:56 4 boots valued at around \$20,000 ... to ugg Imports in
11:16:06 5 San Diego."

11:16:06 6 Q. You don't have to read it out.

11:16:08 7 A. No.

11:16:08 8 Q. Well, let me ask you this. Did Comfort Plus
11:16:10 9 ever do any business with Ugg Imports of San Diego, if
11:16:15 10 you can remember?

11:16:16 11 A. No, we didn't, no.

12 Q. Okay.

11:16:17 13 A. As I said, we - my first trip to the
11:16:20 14 United States was to try and establish an importer of our
11:16:26 15 products. It wasn't successful. Their attitude was that
11:16:35 16 they didn't believe there was a market for our products,
11:16:39 17 so we concentrated from there on in a retail sense, so we
11:16:45 18 didn't do business with anybody. Incorrect. We did do
11:16:50 19 business with some people in Salt Lake City on car seat
11:16:56 20 covers and that would have been around '79, but they were
11:17:11 21 the only ones that - and then there was a guy who had a
11:17:20 22 shop in Houston and he was selling Australian opal and he
11:17:26 23 wanted to add sheepskin products to it and it was quite a
11:17:30 24 nice store anyway. We sent him over a whole heap and he
11:17:34 25 never paid and we finished up getting him back here in

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11:17:38 1 the courts and we got our money, so that was about it, in
11:17:41 2 terms of trading with people in the United States.

11:17:44 3 Q. Okay. I don't think I'm going to ask you any
11:17:46 4 more question about this exhibit.

11:17:47 5 A. Yes, so - yes, but I - yes, I didn't - I didn't
11:17:51 6 come across anybody else at the time we were over there
11:17:58 7 selling products, yes.

11:18:00 8 MR BAGLEY: Okay, thank you, that's all the direct
11:18:02 9 questions I have now. We could take another break, if
11:18:06 10 counsel want to.

11:18:07 11 MR RAYGOR: Yes. We'll just take five minutes.

11:18:09 12 MR BAGLEY: Okay, that's fine.

11:18:11 13 VIDEOGRAPHER: Going off the record at 11.17am.

14 (A short break)

15 [11.17am]

11:31:30 16 VIDEOGRAPHER: Going back on the record at 11.30am.
11:31:32 17 Proceed.

11:31:34 18 MR RAYGOR: Were you finished?

11:31:35 19 MR BAGLEY: I had finished up my questions before
11:31:37 20 the break.

11:31:11 21 EXAMINATION BY MR RAYGOR:

11:31:41 22 Q. So it's still morning. Good morning.

23 A. Good morning.

11:31:42 24 Q. I'm Kent Raygor, just to reintroduce myself,
11:31:45 25 I'm an attorney for Deckers Outdoor Corporation which is

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11:31:49 1 headquartered in Santa Barbara. Have you ever been to
11:31:54 2 Santa Barbara?

11:31:54 3 A. Yes, I have, yes.

11:31:57 4 Q. So anyway, this case is pending in Chicago, I'm
11:31:59 5 working with some Chicago attorneys and we have some
11:32:03 6 questions. I don't think I'm going to take very long
11:32:06 7 with you and get you on your way. I have a few questions
11:32:10 8 based or follow-up on what Mr Bagley asked you and maybe
11:32:14 9 some clarification. At the very beginning he had asked
11:32:16 10 you whether you had ever been a witness in a deposition
11:32:19 11 or supplied any testimony in cases and you said in maybe
11:32:24 12 two or three cases. Do you recall that?

11:32:26 13 A. Yes, yes, I do.

11:32:28 14 Q. And you mentioned one where you acted as an
11:32:30 15 expert witness in this case involving some inferior
11:32:34 16 product?

11:32:34 17 A. Yes.

11:32:35 18 Q. Okay. What were the other case or two?

11:32:40 19 A. Well, that was more to do with that guy in
11:32:45 20 Houston that we had to bring out to Australia and we were
11:32:50 21 suing him. I don't think - whether that - you know,
11:32:59 22 I was a witness in that case.

11:33:02 23 Q. So you were a witness in trying to collect
11:33:05 24 payment?

11:33:06 25 A. Yes. Yes. Yes.

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11:33:07 1 Q. There was just somebody you had supplied
11:33:08 2 product and they didn't pay you?

11:33:11 3 A. Yes, that's correct.

11:33:12 4 Q. Was there another case?

11:33:21 5 A. Yes, there was, to do with - Record Leather
11:33:30 6 called me as a witness in a case that they had against a
11:33:37 7 guy in Melbourne doing medical sheepskins and they called
11:33:46 8 me as a witness in - this guy was saying he wasn't going
11:33:52 9 to pay because he didn't think it was up to a standard
11:33:57 10 and we had used their product and, you know, in hospitals
11:34:04 11 and babies and everything else and had no problem, so I
11:34:09 12 was called upon as a witness in that case.

11:34:12 13 Q. Was that again in a role sort of as an expert
11:34:16 14 witness in sheepskins?

11:34:17 15 A. Yes. Yes.

11:34:18 16 Q. When was that?

11:34:19 17 A. That was in about 1980.

11:34:26 18 Q. And do you recall what court it was in?

11:34:29 19 A. Oh, no. Somewhere in --

11:34:31 20 Q. What State?

11:34:32 21 A. It was in Victoria, in Melbourne.

11:34:34 22 Q. Okay.

11:34:35 23 A. Mmm.

11:34:36 24 Q. You mentioned Record Leather?

11:34:39 25 A. Record Leather, yes.

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11:34:40 1 Q. Can you look at Exhibit 17, which we have
11:34:44 2 marked earlier, it was the George Burcher affidavit, and
11:34:49 3 the first page that Mr Bagley referred you to --

11:34:55 4 A. Oh, that one.

11:34:56 5 Q. -- which said "Current Membership" --

11:34:59 6 A. Yes.

11:35:00 7 Q. When you first looked at this you mentioned,
11:35:02 8 sort of as an aside, "There's Record Wool"?

11:35:08 9 A. Record Leather.

11:35:09 10 Q. Do you see the third box or line from the
11:35:12 11 bottom, Record Wool Pty Limited? Is that who you were
11:35:16 12 referring to?

11:35:17 13 A. No, I - no, this Record Wool, that was, that
11:35:24 14 was really part of Record Leather. It was a branch of
11:35:27 15 his business in Queensland, mmm.

11:35:35 16 Q. Okay.

11:35:35 17 A. Yes, it's one and the same, Don, Don Dinte his
11:35:41 18 name was, yes.

11:36:06 19 Q. Would you look at Exhibit 16? This is that.
11:36:11 20 (Indicates). It looks like this.

11:36:12 21 A. Oh, yes, yes, the ad, yes.

11:36:17 22 Q. And I know it's really hard to read there and
11:36:20 23 let me just try and give it a stab. I'm looking at the
11:36:24 24 wolf in sheep's clothing ad in the upper right?

11:36:29 25 A. Yes.

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11:36:29 1 Q. And underneath the big capital letters where it
11:36:31 2 says "LUXURY SHEEPSKIN PRODUCTS", do you see that?

11:36:34 3 A. Yes. Yes.

11:36:35 4 Q. I'll see if I can read it: "Car Seats Covers
11:36:40 5 (universal & hood fitting)". Does that sound right?

11:36:46 6 A. Yes.

11:36:46 7 Q. And then next, "Tailor Made Seat Covers"?

11:36:49 8 A. Yes.

11:36:50 9 Q. Next, "ugg Boots"?

11:36:51 10 A. Yes.

11:36:51 11 Q. Next, "Slippers". Next, "Moccasins"?

11:36:54 12 A. Yes.

11:36:55 13 Q. Next, "Coats & Vests". Then, "Gloves, Mitts &"
11:37:01 14 - I have no idea: "Mats"? Next, "Fibre Rugs &
11:37:10 15 Cushions". Next, "Golf Club Covers"?

11:37:13 16 A. Yes. Yes.

11:37:13 17 Q. Next, "Medical Sheepskins & Accessories"?

11:37:17 18 A. Yes.

11:37:17 19 Q. And lastly, "Range of Souvenir items"?

11:37:20 20 A. Yes.

11:37:20 21 Q. And now that I've read all of that, you had
11:37:22 22 earlier said all those products were sheepskin; is that
11:37:25 23 still true?

11:37:26 24 A. Yes.

11:37:26 25 Q. Like the souvenir items, what kinds of

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11:37:29 1 sheepskin products were they?

11:37:30 2 A. Oh, sorry, yes. No. Souvenir items - we
11:37:35 3 bought in a few spoons and things like that with
11:37:42 4 "Australia" on it and koala heads and that type of thing,
11:37:46 5 just little intricate things which we added into the
11:37:53 6 shop, mmm.

11:37:57 7 Q. Going back to something that you had mentioned
11:37:59 8 about the California stores, you remember those four
11:38:02 9 shops that you had opened?

11:38:04 10 A. Oh, yes, yes.

11:38:06 11 Q. And you talked about - you said it two
11:38:08 12 different ways. You said that footwear was 70 per cent
11:38:11 13 of the business in those stores; correct?

11:38:13 14 A. Yes.

11:38:14 15 Q. And then you first said that of that
11:38:16 16 70 per cent, probably 60 per cent of that 70 per cent was
11:38:20 17 ugg boots?

11:38:22 18 MR BAGLEY: Objection. Mischaracterizes the
11:38:23 19 testimony.

11:38:24 20 THE DEPONENT: No. No, I think we did go back and
11:38:26 21 correct that.

22 BY MR RAYGOR:

11:38:27 23 Q. It was stated that way, but then you went back
11:38:30 24 and changed?

11:38:31 25 A. Yes. Yes. It made it sound like 60 per cent

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11:38:34 1 of that 70 per cent, but I meant, like, footwear in
11:38:39 2 general was 70 per cent of the sales and it was my
11:38:44 3 estimate that the slippers was, say - so ugg boots were
11:38:53 4 60 per cent of those sales.

11:38:55 5 Q. So 60 per cent of the stores' overall sales,
11:39:00 6 not only footwear sales?

11:39:03 7 A. Yes.

11:39:04 8 Q. And then 10 per cent of the stores' sales were
11:39:06 9 made up of things like slippers and moccasins?

11:39:09 10 A. And coats and - yes.

11:39:10 11 Q. Footwear?

11:39:11 12 A. Oh, footwear, yes, sorry, on the footwear, yes,
11:39:14 13 slippers.

11:39:15 14 Q. So just to be clear, 70 per cent of the sales
11:39:19 15 of these stores, the four stores grouped together, was
11:39:22 16 footwear, right?

11:39:23 17 A. Yes.

11:39:25 18 Q. And so 10 per cent was something other than -
11:39:32 19 footwear other than ugg boots?

11:39:34 20 A. Yes.

11:39:34 21 Q. And 60 per cent of the overall sales were ugg
11:39:38 22 boots?

11:39:39 23 A. Yes.

11:39:39 24 Q. Okay. And was that true from the time that you
11:39:41 25 first opened the stores until it ended?

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11:39:43 1 A. Oh, no, I think it took, it took about six
11:39:46 2 months to get a pattern at each of these shops, but that
11:39:50 3 pattern seemed to be the same all the way through.
11:39:53 4 Woodland Hills, for instance, was a little bit more
11:39:56 5 upmarket than the other three shops. Woodland Hills was
11:40:01 6 close to where the stars had their, the movie stars had
11:40:06 7 their ranches and things like that and they spent time in
11:40:10 8 the shops.

11:40:12 9 Q. Can you - did the shops have a sort of common
11:40:16 10 layout? Was it - do you know what a strip wall is, what
11:40:19 11 we call that in the US?

11:40:21 12 A. No.

11:40:23 13 Q. Were they stand-alone shops, were they in a
11:40:25 14 shopping centre or on a street front?

11:40:29 15 A. Two of them were in shopping centres,
11:40:32 16 Santa Barbara and Thousand Oaks, and the other two,
11:40:38 17 although they probably would be in a shopping centre,
11:40:39 18 they weren't in a mall as such, they were sort of
11:40:45 19 stand-alone shops.

11:40:47 20 Q. What's very common in Southern California is
11:40:49 21 what we call a strip mall --

11:40:50 22 A. Yes.

11:40:50 23 Q. -- which may have five to 10 or 15 shops sort
11:40:54 24 of around a parking lot.

25 A. Yes.

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11:40:56 1 Q. Something like that?

11:40:57 2 A. Yes, yes, something like that they were.

11:40:59 3 Q. Okay. And what about the layout of the shops
11:41:03 4 themselves? Was there a storefront and a showroom?

11:41:07 5 A. No.

11:41:08 6 Q. An office in the back?

11:41:10 7 A. A bit of an office in the back, but primarily
11:41:14 8 it was just a shop, you know, and - but they weren't laid
11:41:20 9 out in any particular - because I think I mentioned
11:41:24 10 earlier, when we were talking about those shops, that we
11:41:29 11 called them all different names because we did have in
11:41:33 12 mind originally that we may franchise each of those shop
11:41:41 13 names around America. That was our idea long-term, never
11:41:49 14 got to that, but that's what we had in mind, so we didn't
11:41:52 15 have them so that they looked as though they were
11:41:54 16 connected at all, mmm.

11:41:59 17 Q. Okay. And as far as - for each of these four
11:42:02 18 shops, were they set up in such a way that there would be
11:42:05 19 a front door, for example, where a customer or potential
11:42:09 20 customer could come in and look at your product, buy,
11:42:12 21 hopefully --

11:42:13 22 A. Yes. Yes.

11:42:13 23 Q. -- and not move on?

11:42:14 24 A. Yes. Yes.

11:42:16 25 Q. Okay. Do you recall how the product was

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11:42:18 1 displayed?

11:42:20 2 *A. Oh, jeez, shelving, you know, coat racks,
11:42:25 3 for instance, for coats, nothing particularly comes to
11:42:34 4 mind about how they were displayed, but certainly boots
11:42:41 5 were on shelving, ugg boots.

11:42:45 6 VIDEOGRAPHER: I need to go off the record for a
11:42:47 7 minute. Going off the record at 11.41am.

8 (A short break)

11:42:55 9 [11.41am]

11:43:28 10 VIDEOGRAPHER: Going back on the record at 11.42am.
11:43:31 11 Proceed.

11:43:32 12 MR RAYGOR: Okay. Were you able to get everything
11:43:35 13 until we took the break?

14 COURT REPORTER: Yes. Did you want me to read the
15 answer?

16 MR RAYGOR: Yes, give us the last sentence or two.
17 (Previous answer marked * read by court reporter)

11:43:56 18 THE DEPONENT: That's correct, yes.

19 BY MR RAYGOR:

11:43:57 20 Q. And were the boots, when they were displayed on
11:43:58 21 the shelving, so people could pick them up and try them
11:44:02 22 on, look at them, kind of thing?

11:44:04 23 A. Yes. Mainly, they always - the ones on display
11:44:10 24 were always just a left boot or a right boot, you know,
11:44:14 25 which is the smart way to display in shops that we found,

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11:44:18 1 in Australia anyway, and if you've got a pair, the pair
11:44:21 2 get nicked, you know.

11:44:22 3 Q. They walk off?

11:44:24 4 A. Yes.

11:44:26 5 Q. It's the same in the US.

11:44:27 6 A. I used to take them into the States with -
11:44:32 7 because in those years samples were still - you had to
11:44:38 8 pay duty on bringing them into the States and I always
11:44:43 9 took about 12 boots in a suitcase and they used to say,
11:44:49 10 "Oh, you've got to pay duty on those", and I'd say,
11:44:53 11 "Well, you know, I'll pay duty, but how many one-legged
11:44:57 12 people are going to buy ugg boots?" But then the next
11:45:01 13 trip I went over there I took the right one.

11:45:05 14 Q. That's pretty smart.

11:45:07 15 A. Yes.

11:45:08 16 Q. So when the half of a pair was displayed on the
11:45:14 17 shelf then I assume it was no longer in its plastic bag,
11:45:17 18 right?

11:45:17 19 A. That's correct, yes.

11:45:19 20 Q. How about the moccasins or the slippers, same
11:45:22 21 kind of thing?

11:45:23 22 A. Same thing, yes.

11:45:24 23 Q. Okay,

11:45:24 24 A. Displayed the same way.

11:45:26 25 Q. And was there any other footwear that you sold

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11:45:28 1 other than the boots, the moccasins and slippers?

11:45:33 2 A. Slippers, there was a range. There were about
11:45:37 3 six different types of slippers ranging from like a
11:45:42 4 thong, which didn't go well over there, from thongs to
11:45:48 5 slip-ons, to pull-on, that type of thing, there was about
11:45:53 6 a range of six, so we would have one of each of those on
11:45:58 7 a shelf, mmm.

11:46:00 8 Q. So for those did you present them under, like,
11:46:04 9 different model names or numbers, what would be called
11:46:07 10 the thong or something else, or was it a product number?

11:46:14 11 A. They had a product number.

11:46:15 12 Q. A number?

11:46:16 13 A. All of our ugg boots and everything had a
11:46:19 14 product number, yes.

11:46:20 15 Q. Like a SKU? Do you know S-K-U, a product
11:46:25 16 number? It may be something that's American, I don't
11:46:28 17 know.

11:46:28 18 A. Usually - I think, from memory, ugg boot was a
11:46:36 19 - a UB200 was, from memory, was a short ugg boot. A
11:46:42 20 UB400 was a big ugg boot, you know. It was usually a
11:46:46 21 fairly simple terminology, bearing in mind we never had
11:46:49 22 computers, yes.

11:46:51 23 Q. Going back to this Exhibit 16 --

11:46:54 24 A. Yes.

11:46:54 25 Q. -- I got sort of sidelined by asking about the

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11:46:57 1 percentages in your stores?

11:47:00 2 A. Yes.

11:47:00 3 Q. Can you tell, is this from an Australian
11:47:03 4 publication, if it's Yellow Pages or something else?

11:47:06 5 A. I would think it would be and the reason I say
11:47:10 6 this is because all of these other people in there,
11:47:19 7 Discount Ugg Boots, Hako, for instance, blah, blah, blah,
11:47:26 8 they were all from South Australia.

11:47:27 9 Q. Okay.

11:47:28 10 A. So I would think this would be out of the
11:47:33 11 Yellow Pages, mmm.

11:47:39 12 Q. You mentioned Charlie Zuker?

11:47:42 13 A. Yes.

11:47:42 14 Q. Who do you spell Zuker?

11:47:45 15 A. Z-U-K-E-R.

11:47:53 16 Q. You say that you stayed on to help manage the
11:47:57 17 business?

11:47:58 18 A. Yes.

11:47:59 19 Q. And what was the business, if you'd closed down
11:48:02 20 the stores? Did he become an importer from you as a
11:48:09 21 wholesaler or what?

11:48:11 22 A. He was - Charlie Zuker, Record Leather, never
11:48:14 23 made anything. He was a tanner, he tanned the
11:48:19 24 sheepskins. He and I exchanged 25 per cent ownership in
11:48:23 25 each other's business because I needed to be locked in

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11:48:27 1 with a tannery. We were cutting up \$35,000 worth of
11:48:34 2 sheepskins every week in our place.

11:48:36 3 Q. Was he Australian? Is he Australian?

11:48:40 4 A. Oh, yes, he was Australian.

11:48:41 5 Q. So he wasn't like a US partner?

11:48:44 6 A. No. No. Well, he was by way of his connection
11:48:48 7 with - he owned 25 per cent of Comfort Plus and I owned
11:48:51 8 25 per cent of Record Leather, yes.

11:48:54 9 Q. And at some point then did you sell the entire
11:48:57 10 Comfort Plus business to him?

11:48:58 11 A. Yes, yes, to him.

11:48:59 12 Q. The remaining 75 per cent?

11:49:02 13 A. Well, the New Zealand company had been in and
11:49:05 14 wanted to buy us because they were looking to start in
11:49:09 15 Australia and they thought, "Well, let's just go to the
11:49:12 16 biggest first and buy them out", so I was quite
11:49:15 17 interested in their offer because, to be frank, I didn't
11:49:20 18 see a real future in the sheepskin market.

11:49:26 19 Q. Why is that?

11:49:28 20 A. Well, you know, I think I mentioned earlier
11:49:32 21 about the people that get into ugg boots that were aged
11:49:37 22 12 to 25, that was the market, that was the big part of
11:49:43 23 the market. Doctors started prescribing them for
11:49:49 24 varicose veins and everyone got excited about it, except
11:49:55 25 I didn't because I saw that if you start to put people of

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11:50:01 1 60-odd plus in ugg boots, the 20-year-olds are not going
11:50:08 2 to wear them.

11:50:09 3 Q. And there are not a lot of 12 year olds with
11:50:13 4 varicose veins.

11:50:14 5 A. No. Yes. And I proved to be right because
11:50:17 6 three years later - well, that particular year there were
11:50:19 7 15 million pairs of ugg boots or sheepskin footwear,
11:50:25 8 15 million pairs made and sold in Australia. Three years
11:50:32 9 later there were less than 1 million pairs, so it was a
11:50:41 10 big, big drop, and I really - I got - my mentor in
11:50:46 11 business always said to me there are three things when
11:50:48 12 you go into business: one, always pay the taxman what
11:50:52 13 you think's a fair thing, not what he thinks, or you
11:50:56 14 won't make it, and never go into manufacturing, which
11:51:00 15 I took no notice of, but the third thing was know when to
11:51:07 16 sell.

11:51:08 17 Q. Know when to get out.

11:51:09 18 A. I said, "When will I know that?" He said,
11:51:13 19 "You'll know", and I did.

11:51:18 20 Q. Do you have any records at all that would show
11:51:21 21 how many boots, for example, that you sold in that
11:51:23 22 time frame? Did you keep any sales records?

11:51:28 23 A. In which time - no, I kept no records at all.
11:51:31 24 The only thing that I got out of the business when I -
11:51:33 25 when I left was that they gave me the shields that we had

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11:51:38 1 won for awards. They believed that that was my doing and
11:51:42 2 they gave me the shields and that's all I took, but no
11:51:46 3 records, no nothing.

11:51:48 4 Q. Can you estimate for me how many pairs of boots
11:51:51 5 that you sold - that you, I should say, exported to the
11:51:56 6 US for sale?

11:51:57 7 A. Oh, exported to the US? In the 18 months to
11:52:06 8 two years we had the shops, and I'm still not sure which
11:52:10 9 it was, but it was 18 months to two years, that's
11:52:17 10 70 per cent of their business, I would say it would have
11:52:20 11 to be close to half a million pairs in that time, yes.

11:52:43 12 Q. In your work in this industry in Australia and
11:52:49 13 operating in those four stores in the US, did you ever
11:52:53 14 come across a man named Brian Smith? Brian Smith?

11:53:00 15 A. Oh, does he have a company or --

11:53:05 16 Q. It was Ugg Imports for a while and then it was
11:53:08 17 Ugg Holdings. He was from Australia and moved to
11:53:12 18 San Diego, California, Santa Monica, California, first?

11:53:20 19 A. I don't think I ever met him, but I think - now
11:53:24 20 that you mention his name, I think he was the guy that
11:53:26 21 was trying to register the name ugg boot in Australia and
11:53:31 22 I was on the board of the Sheepskin Manufacturers
11:53:35 23 Association at the time and the Government were going to
11:53:38 24 do it, for whatever reason I don't know, and we put up a
11:53:44 25 submission that you can't give him the registration of a

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11:53:51 1 name that is a generic term and has been for 20-odd years
11:53:56 2 in Australia, and so he didn't get it and I'm pretty
11:54:02 3 sure - I couldn't be 100 per cent, but I'm pretty sure
11:54:05 4 that would probably be the guy, but I never met him, no.

11:54:10 5 Q. Do you remember that somebody did actually get
11:54:14 6 registered in Australia "Ugh Boot", U-G-H Boot?

11:54:18 7 A. Yes. It didn't last long.

11:54:21 8 Q. But do you know if that was Brian Smith?

11:54:26 9 A. I don't know, no; no, I don't know. They tried
11:54:34 10 all sorts of descriptive terms and that sort of thing: a
11:54:41 11 few people tried.

11:54:43 12 Q. How many trips to the US did you make in
11:54:46 13 connection with trying to sell your product? Were there
11:54:49 14 five?

11:54:50 15 A. No. I only - one in trying to sell it on a
11:54:54 16 wholesale basis.

11:54:55 17 Q. Right.

11:54:55 18 A. I went and saw the Trade Commissioner,
11:55:01 19 et cetera, over there. I found him to be useless,
11:55:06 20 you know, so I did it - I did some hunting around myself,
11:55:11 21 but yes, I've got to say I went back thinking that
11:55:17 22 sheepskin products are going to be hard to sell in the
11:55:19 23 United States, even though when you went to any of the
11:55:25 24 stores in Sydney, et cetera, there were American citizens
11:55:32 25 on holidays here buying ugg boots and coats and all sorts

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11:55:37 1

of things.

11:55:40 2

Q. So that was - as an attempt to act as a

11:55:42 3

wholesaler that didn't pan out, right?

11:55:45 4

A. No, I wasn't happy with that trip, mmm.

11:55:47 5

Q. And you said you hunted around a little bit and

11:55:49 6

that just didn't work?

11:55:51 7

A. No.

11:55:52 8

Q. But then you went back in connection with

11:55:54 9

opening stores, right?

11:55:55 10

A. That's correct, yes.

11:55:57 11

Q. Those four retail shops?

11:55:58 12

A. Yes.

11:55:59 13

Q. About how many times did you go back in

11:56:01 14

connection with that business?

11:56:02 15

A. Four or five times, yes.

11:56:04 16

Q. So overall, were all of those in California,

11:56:07 17

those trips, just in California?

11:56:09 18

A. Yes. I went to Houston once.

11:56:11 19

Q. That was the deal where you had to sue the guy?

11:56:15 20

A. Yes, that's right, that's the one.

11:56:16 21

Q. Did you get all your money?

11:56:17 22

A. Yes, got all my money, yes.

11:56:19 23

Q. Good. By the way, it's impossible for us to

11:56:21 24

deal with Texans also: it's like another country.

11:56:29 25

Anyway. So in those five, maybe six trips to the US --

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11:56:34 1 A. Yes.

11:56:35 2 Q. -- to California and the one to Houston,

11:56:39 3 I guess, did you ever come across anybody else using the
11:56:43 4 term "ugg" in connection with sheepskin footwear?

11:56:50 5 A. No, to be honest, not in Los Angeles and
11:56:53 6 certainly there wasn't anything in Houston, that's why
11:57:00 7 this guy wanted to get into it. I don't think Houston
11:57:04 8 were ready for it. I don't know.

11:57:06 9 Q. Did you see any sort of advertising or
11:57:08 10 marketing showing that anybody else, other than you, was
11:57:13 11 using the term "ugg"?

11:57:16 12 A. No.

11:57:17 13 Q. Whether spelt U-G-G, U-G or U-G-H, or any other
11:57:22 14 way?

11:57:22 15 A. Not really. As I said, I was on the - at the
11:57:25 16 time I was on the Board of the Sheepskin Manufacturers
11:57:28 17 Association and I didn't know anybody at that time, any
11:57:34 18 members that were doing anything in the United States,
11:57:38 19 mmm, or, in fact, any other country, yes.

11:58:04 20 Q. You mentioned John Arnold.

11:58:06 21 A. Yes.

11:58:06 22 Q. Have you met him?

11:58:07 23 A. Yes. Yes. John Arnold wanted me to buy his
11:58:11 24 business and I nearly did and he said he had the
11:58:15 25 registration of the word "ugg" boot in his top drawer and

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11:58:20 1 if I bought his business I'd get the letter, but it was
11:58:23 2 only at the last minute the figures that he'd given me
11:58:27 3 didn't stack up and I didn't buy it, but yes, no, John,
11:58:31 4 quite a nice guy, yes.

11:58:33 5 Q. You said you think he's the one who invented or
11:58:36 6 coined the term "ugg"?

11:58:39 7 A. The first I ever heard of it anyway, yes.

11:58:42 8 Q. About when do you think he did that, do you
11:58:44 9 know?

11:58:44 10 A. That would have been in the mid '60s, yes.

11:58:48 11 Q. Did you hear of it at that time in the mid '60s
11:58:51 12 yourself, that he was using it, or is it something you
11:58:53 13 learned later when --

11:58:54 14 A. It was something I learned later, yes.

11:58:56 15 Q. Was that later in connection --

11:59:00 16 A. But it was recognised pretty much by anybody in
11:59:03 17 the sheepskin industry, particularly in South Australia,
11:59:06 18 that he was the inventor of the ugg boot and he told me
11:59:10 19 the story that I said, his mother said it was an ugly
11:59:14 20 boot and he said, "That's a good name for it", you know.

11:59:20 21 Q. Have you ever heard of stories about
11:59:22 22 Royal Australian Air Force pilots in World War II using
11:59:28 23 sheepskin boots to stay warm in unpressurised cabins?

11:59:33 24 A. They didn't use sheepskin, they used lambs wool
11:59:38 25 and that is a knitted wool, not a sheepskin.

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11:59:41 1 Q. Did you ever hear any stories about them using
11:59:43 2 the term "ugg" for what they were wearing for footwear?

11:59:46 3 A. No.

11:59:52 4 Q. When were you having discussions with
11:59:56 5 John Arnold about potentially buying his business?

12:00:01 6 A. About '78, 1978, yes.

12:00:09 7 Q. Where was he located at the time? Where was he
12:00:11 8 located at the time?

12:00:13 9 A. He had a small shop in downtown Adelaide, right
12:00:20 10 in the heart of the city, in Franklin Street, something
12:00:23 11 like that. I remember going to his shop and having a
12:00:26 12 look at it, mmm.

12:00:34 13 Q. I'm sorry to jump around. I just made notes
12:00:36 14 here.

12:00:36 15 A. No, that's all right.

12:00:37 16 Q. I'm trying to just cover my notes first and
12:00:40 17 then I'll move on to some other stuff. You talked about
12:00:42 18 the seed in the skin problem. I'd never heard that
12:00:47 19 before.

12:00:47 20 A. Hadn't you?

12:00:48 21 Q. That was an interesting aspect to it.

12:00:49 22 A. Not a lot of people will, because tanning's not
12:00:54 23 done in Australia now anyway, but I don't know how they
12:00:57 24 overcome the problem in China in tanning the skin because
12:01:01 25 the skin is still going to have grass seeds. Grass seeds

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12:01:05 1 is a problem. New Zealand don't have it, they don't have
12:01:08 2 that problem. Every skin that comes out in New Zealand
12:01:12 3 will be perfect in its finish, with no scars or tissues,
12:01:19 4 because they don't have a grass seed problem.

12:01:22 5 Q. Well, you said - maybe that's the answer. You
12:01:24 6 said that you had to source skins that didn't have the
12:01:28 7 seed scars from some other source?

12:01:30 8 A. Yes.

12:01:32 9 Q. Where was that? Was that New Zealand?

12:01:33 10 A. No, no, no, no, it was Record Leather, he knew
12:01:36 11 how to separate skins in the tannery itself, so that -
12:01:43 12 not every skin in Australia will have that problem, but
12:01:48 13 the majority of them will, and so he used to sort through
12:01:57 14 and get skins that were thick enough to be able to grind
12:02:00 15 down, if you know what I mean. It's called polishing.

12:02:03 16 Q. Okay.

12:02:04 17 A. Mmm.

12:02:05 18 Q. I'm learning.

12:02:06 19 A. Well, I learned it - mainly, I asked him a
12:02:10 20 question once at his tannery, "Why is it that you get a
12:02:16 21 batch of skins and you put them through a dye of a beige
12:02:20 22 and they will come out four different colours? Why is
12:02:27 23 that, if they're in the one batch?" And he said, "Why is
12:02:30 24 it that some people go out in the sun and they go red and
12:02:34 25 others go brown? Same difference."

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1 Q. Okay.

12:02:37 2 A. That was his answer and he was a well-respected
12:02:41 3 tanner around the - around then.

12:02:43 4 Q. Do you remember Garren McPhee that you
12:02:46 5 mentioned?

12:02:46 6 A. Yes.

12:02:47 7 Q. And he ran your stores in the US, right?

12:02:50 8 A. Yes, he did.

12:02:51 9 Q. Was he American?

12:02:52 10 A. No, no, no, he was an Australian living in - he
12:02:55 11 was a strange guy, actually, okay, but he learnt the ways
12:03:00 12 over there very quickly. He was working for a movie lot
12:03:06 13 over there. He was - unlike - to look at him, you'd
12:03:11 14 swear that he was Burt Reynolds and he used to do a lot
12:03:15 15 of, what do you call it, second, stand-in stuff --

12:03:20 16 Q. Oh, yes.

12:03:21 17 A. -- as Burt Reynolds, you know. Well, that all
12:03:25 18 finished and he was - but he still had his green ticket
12:03:29 19 over there, so that's why we got talking. I had met him
12:03:34 20 when he was over in Melbourne once, mmm, but I don't know
12:03:38 21 where he is now. I did hear that he'd come back to
12:03:42 22 Australia, but he owes me a bit of money, so obviously he
12:03:45 23 wouldn't contact me, yes.

12:03:47 24 Q. Was he involved in what you found out where
12:03:52 25 product was going out the back door in the US stores,

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12:03:55 1 basically?

12:03:55 2 A. Yes, he was, yes.

12:03:56 3 Q. Is that why you say he owes you a bit of money?

12:04:00 4 A. Yes, that's right.

12:04:00 5 Q. Okay. So when you closed the stores down, what
12:04:03 6 happened to the inventory? Did you sell it off?

12:04:07 7 A. I sold all of the stock that was, in each of
12:04:12 8 the three shops was sold with the shops.

12:04:15 9 Q. To whom?

12:04:17 10 A. To three different buyers.

12:04:21 11 Q. Okay.

12:04:21 12 A. And the stock was sold to them and strangely
12:04:30 13 enough we never really got any more orders from them, so
12:04:34 14 I don't know what they did, whether --

12:04:36 15 Q. That was my next question.

12:04:37 16 A. Yes.

12:04:38 17 Q. Did you continue to wholesale to them?

12:04:40 18 A. Mmm.

12:04:40 19 Q. But no, huh?

12:04:41 20 A. No, no, we got - we got a couple of orders from
12:04:44 21 them but nothing substantial.

12:04:48 22 Q. And that's about the same time that you decided
12:04:51 23 just to get out of that business and move to
12:04:53 24 screen printing or something else?

12:04:55 25 A. No, I didn't have screen printing in mind then.

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12:04:58 1 I just had - just to have a year off, you know.

12:05:04 2 I'd worked 12 hours a day and probably six-and-a-half
12:05:06 3 days a week, I needed to have a year off, so I did, mmm.

12:05:39 4 Q. You mentioned that your expenses are being paid
12:05:42 5 for this today, your expenses, travel from Adelaide to
12:05:47 6 here and back?

12:05:48 7 A. Yes, yes, it's all - it was all arranged and
12:05:50 8 sent over to me, yes.

12:05:52 9 Q. Hotel?

12:05:52 10 A. Yes, hotel and airfares, yes.

12:05:55 11 Q. Meals?

12:05:57 12 A. Well, the meals were included at the, at the
12:06:03 13 place at which I stayed, yes.

12:06:07 14 Q. And who's paying for it?

12:06:09 15 A. I've got no idea.

12:06:11 16 Q. Do you know who Eddie Oygur is? Eddie Oygur?

12:06:17 17 A. No, no idea.

12:06:18 18 Q. Or Adnan Oygur?

12:06:21 19 A. No. I saw it - I saw it on the, on some
12:06:25 20 papers, but I've got no idea who they are.

12:06:28 21 Q. Do you know who Australian Leather is?

12:06:29 22 A. I've heard of Australian Leather, yes.

12:06:31 23 Q. Apart from this lawsuit?

12:06:33 24 A. Yes.

12:06:34 25 Q. Because I'll just say in this lawsuit Deckers,

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12:06:36 1 my client, is suing Australian Leather?

12:06:39 2 A. Yes, yes, I saw that.

12:06:41 3 Q. And its owner?

12:06:43 4 A. And the owners, I take it?

12:06:43 5 Q. Yes, that Eddie Oygur who I mentioned?

12:06:46 6 A. I don't know - I don't know the man, no.

12:06:48 7 Q. So apart from what you may have heard about it
12:06:50 8 in this lawsuit, what have you heard about
12:06:53 9 Australian Leather?

12:06:56 10 A. I think only from a friend of mine, I sold him
12:07:02 11 one - the Zukers didn't want the sheepskin shops that
12:07:11 12 I had in Adelaide, so I had to - and I offered to keep
12:07:14 13 them, but they said that would be a conflict of interest,
12:07:19 14 so I got rid of those, closed two of them down and sold
12:07:28 15 two off and one was to a friend of mine who used to work
12:07:32 16 for me in Comfort Plus and he's kept that Woolshed shop,
12:07:39 17 one of the few left in Adelaide. There's two people in
12:07:45 18 Adelaide that do tailor-made car seat covers and he's one
12:07:48 19 of them, so I've heard of him. I hear a few of the
12:07:52 20 industry, you know, just talking to him because I still
12:07:56 21 see him quite regularly, you know, and he has mentioned
12:08:00 22 about Australian Leather.

12:08:01 23 Q. What did he say about Australian Leather?

12:08:05 24 A. Oh, nothing that really sort of got my ear up,
12:08:11 25 you know, just that he apparently had - he was able to

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12:08:16 1 buy some skins from him, which is becoming more and
12:08:22 2 more - there are no tanneries left in Australia, they're
12:08:27 3 all shut down, so the only way to get a sheepskin tanned
12:08:31 4 now is to send the salted skin off the sheep's back over
12:08:36 5 to China and get it sent back, and I think he was doing
12:08:39 6 that and I think my friend was buying some skins for him,
12:08:47 7 mmm.

12:08:47 8 Q. How did you first get involved in this dispute
12:08:50 9 between Australian Leather and Deckers?

12:08:57 10 A. I don't know. I guess I got a phone call from
12:09:00 11 you, yes, probably, mmm.

12:09:03 12 Q. From Mr Terceiro?

12:09:04 13 A. Yes. Yes.

14 MR RAYGOR: Am I - am I saying - Michael, is
15 that --

12:09:07 16 MR TERCEIRO: It's sounds pretty close, yes, just
12:09:09 17 say that.

12:09:13 18 THE DEPONENT: Michael. Yes. No, and we've just
12:09:14 19 been in regular contact ever since and he asked me would
12:09:16 20 I be available to - to - yes, and I said I don't see why
12:09:23 21 not.

22 BY MR RAYGOR:

12:09:23 23 Q. And when you say "regular contact ever since",
12:09:26 24 like, when was the first contact?

12:09:29 25 A. Oh, gee, I reckon it would be six months ago or

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12:09:34 1 so.

12:09:35 2 Q. And did Mr Terceiro reach out to you or did you
12:09:41 3 reach out to him?

12:09:44 4 A. Well, he rang me initially --

12:09:45 5 Q. Initially, right.

12:09:47 6 A. -- and said, "What's going on?" That's when I
12:09:51 7 first heard about the - I had actually heard about it on
12:09:58 8 a radio program, actually, over in Adelaide that
12:10:02 9 Leon Byner, who we were talking earlier about off camera,
12:10:12 10 Leon Byner was trying to organise for this guy to get
12:10:15 11 some financial assistance to fight this, you know. How
12:10:19 12 dare they take our word "ugg" boot, you know, a natural
12:10:25 13 Australian's attitude, and I think he was trying to raise
12:10:28 14 finance. That's the last I - and that's when I first
12:10:31 15 heard about it and then I got the phone call from
12:10:34 16 Michael.

12:10:35 17 Q. And you said you had regular contact with was it
12:10:38 18 with Mr Terceiro since then?

12:10:40 19 A. Yes. Yes.

12:10:41 20 Q. Like how regular, how often?

12:10:43 21 A. Oh, gee, probably five, six emails, just,
12:10:48 22 you know, when things are going to take place, et cetera,
12:10:51 23 and --

12:10:52 24 Q. Emails too and from?

12:10:54 25 A. Yes.

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12:10:55 1 Q. Any other sort of - any letters or any - did he
12:10:58 2 ever write to you in a letter form as opposed to email?

12:11:01 3 A. No, no, just email.

12:11:03 4 Q. Were any materials ever provided - it's noisy.
12:11:08 5 Were any materials provided to you to look at to get
12:11:11 6 ready for today?

12:11:18 7 A. Yes, I think I had a few things. I've got an
12:11:22 8 idea, that one, the exhibition - Exhibit 17.

12:11:27 9 Q. Exhibit 17?

12:11:28 10 A. Yes, I think I've seen that, and, of course,
12:11:33 11 Deckers sent me this one from yourself, Greer Burns &
12:11:39 12 Crain, I've seen that.

12:11:40 13 Q. Oh, the letter, yes, Exhibit 15?

12:11:42 14 A. Yes, the letter sort of - which says, "We're
12:11:45 15 not really as bad as we sound", you know.

12:11:49 16 Q. Did you believe it when you read it?

12:11:52 17 A. Oh, I didn't have to doubt it. Yes, from what
12:11:58 18 I'd heard around, and that was before I got involved, was
12:12:02 19 that, you know, Deckers were really going to take this
12:12:06 20 bloke to town and they were going to take his business
12:12:09 21 and his car and his house and everything else and
12:12:12 22 I thought, "Oh, that's not right", you know.

12:12:14 23 Q. And where did you hear that from?

12:12:17 24 A. Oh, that was in the papers in Adelaide and
12:12:23 25 then, of course, Leon Byner got a hold of it on the radio

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12:12:28 1 and he's Mr Fix It Man over there, you know, so I don't
12:12:32 2 know whatever happened about that, but I never heard any
12:12:36 3 more about it.

12:12:38 4 Q. Apart from - have you ever seen a copy of the
12:12:40 5 complaint in this lawsuit? The complaint is a document
12:12:44 6 that outlines the claims that Deckers is asserting?

12:12:47 7 A. Yes.

12:12:47 8 Q. It's filed with the court in the US and that
12:12:50 9 starts the whole legal process. Have you ever seen that?

12:12:52 10 A. No, I don't think so, no.

12:12:55 11 Q. And some of it is summarised here in this
12:12:59 12 letter, Exhibit 15, but do you understand that there's
12:13:01 13 more going on in a lawsuit than just the use of the word
12:13:05 14 "ugg" by Mr Oygur and Australian Leather?

12:13:09 15 A. Well, I understand from this one that,
12:13:19 16 you know, you're trying to prevent him - well, that his
12:13:23 17 main argument, as I would gather from that letter, his
12:13:26 18 main argument will be his loss of business in the
12:13:31 19 United States.

12:13:35 20 Q. Do you understand, though, that Deckers is
12:13:38 21 asserting claims against him because he is using "ugg" in
12:13:41 22 the United States?

12:13:45 23 A. Asserting claims against them?

12:13:48 24 Q. Yes.

12:13:48 25 A. No, I didn't.

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12:13:49 1 Q. Do you understand that Deckers is also suing
12:13:53 2 Australian Leather because Mr Oygur and his company are
12:13:56 3 also infringing design patents, registered designs it's
12:14:00 4 called here in this letter, in the US?

12:14:03 5 A. Mmm. I didn't even know there was registered
12:14:08 6 designs. I mean --

12:14:11 7 Q. If you look - and there's paragraph 1, in 15,
12:14:16 8 that says - in Exhibit 15, do you see the fourth line
12:14:23 9 down in paragraph 1?

12:14:24 10 A. Paragraph 1? "Contrary to what you might have
12:14:27 11 heard from others", yes, yes, yes.

12:14:29 12 Q. The fourth line down says, "The lawsuit is only
12:14:32 13 directed at ensuring that Australian Leather does not use
12:14:35 14 Deckers' U.S. intellectual property, including its
12:14:38 15 registered UGG" - the circle R, it's U-G-G all caps -
12:14:44 16 "and the common law CARDY" - C-A-R-D-Y with a small "TM"
12:14:48 17 - "trademarks and registered designs, on or in connection
12:14:53 18 with goods that Australian Leather ships to American
12:14:56 19 consumers." That's what I was talking about registered
12:14:59 20 patents, patented designs.

12:15:01 21 A. Yes.

12:15:02 22 Q. That's what I was referring to about registered
12:15:03 23 designs. You heard that he was using registered designs?

12:15:08 24 A. No, I haven't heard that, no.

12:15:09 25 Q. Had you heard that he was using our

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12:15:12 1 Cardy trademark?

12:15:16 2 A. Look, I did see that in there, but I've never
12:15:19 3 heard of Cardy.

12:15:20 4 Q. Have you ever seen any of his products?

12:15:23 5 A. No.

12:15:26 6 Q. Have you ever seen any of Deckers' products?

12:15:29 7 A. Not really. I haven't been to the States for -
12:15:32 8 I'm sure they don't sell them here.

12:15:35 9 Q. Have you heard from anyone, Mr Terceiro or
12:15:38 10 anybody else, that Australian Leather and Mr Oygur are
12:15:41 11 actually counterfeiting Deckers' product?

12:15:45 12 A. No, I haven't heard that.

12:15:56 13 Q. In your initial contact with Mr Terceiro you
12:16:00 14 mentioned that he had described, in the conversation you
12:16:09 15 said that he described what was going on in the lawsuit?

12:16:14 16 A. Yes.

12:16:14 17 Q. Can you tell me, to the best of your
12:16:16 18 recollection, what he told you?

12:16:19 19 A. Well, that this case was going on about the -
12:16:25 20 between Deckers and Australian Leather and primarily it
12:16:34 21 was over the use of the word ugg boot and, you know, as
12:16:41 22 I've said all along and said earlier, you know, ugg boot
12:16:45 23 to me has been a generic term, was used to Australia in
12:16:50 24 the '60s, it was certainly used in America in the late
12:16:57 25 '70s to early '80s in our shops, I don't know about

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12:17:02 1 anybody else, and one would just wonder how the hell they
12:17:05 2 ever got the word ugg boot registered. You know, it's
12:17:10 3 like trying to - it's like going out and getting a glass
12:17:16 4 and registering the word "glass", you can't use "glass"
12:17:21 5 any more.

12:17:23 6 Q. Did he mention to you anything other - you said
12:17:27 7 it was primarily about the use of ugg boots?

12:17:28 8 A. Yes, yes, that was primarily what we were
12:17:30 9 talking about and, you know, would I be prepared to be a
12:17:38 10 witness in this thing and I said yes, I would, because --

12:17:43 11 Q. Did he mention anything about also it concerned
12:17:47 12 the use of the Cardy trademark?

12:17:49 13 A. No, we never talked about that trademark.

12:17:52 14 Q. Did he mention to you that the dispute also
12:17:53 15 involved the infringement of patented designs owned by
12:17:57 16 Deckers in the US?

12:17:58 17 MR BAGLEY: Objection. Asked and answered. You
12:18:01 18 can answer the question.

12:18:10 19 THE DEPONENT: Well, I find it very hard. I would
12:18:12 20 think the same thing about designs. I've seen so many
12:18:17 21 different design ugg boots people have made over the
12:18:21 22 years, some are good, some are bad, but I've never been
12:18:27 23 known to copy any of them. To me an ugg boot was an ugg
12:18:32 24 boot. You know, I know the New Zealand people when they
12:18:35 25 took over the - sold out - the Zukers sold to a New

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12:18:42 1 Zealand company and they had rung me and asked me to come
12:18:45 2 and run their company for them again and I said I wasn't
12:18:49 3 interested, and they were talking about making ugg boots
12:18:52 4 with whistles and bells on and everything else. I said,
12:18:57 5 "I've got to tell you, the plain old ugg boot, ankle
12:19:03 6 length, if you can make that and sell it in Australia for
12:19:06 7 \$20, you've got 85 per cent of the market." Who needs to
12:19:12 8 do whistles and bells for 15 per cent of the market?
12:19:18 9 Right? So I mean that was just - I know I'm getting off
12:19:21 10 the track a bit, but that's my feeling on designs. If
12:19:26 11 there is any possible way of making an ugg boot different
12:19:33 12 than what was already on the market in the late '70s,
12:19:39 13 I've never heard of it, you know: I mean, design.

12:19:47 14 Q. Maybe because you haven't seen the complaint
12:19:49 15 might be a reason for some of the confusion, but in the
12:19:52 16 US a design patent is for ornamental features, not the
12:19:59 17 structure of the boot itself, the way the boot - it's not
12:20:01 18 for the design of the boot per se, the functional part of
12:20:04 19 it, it's really about the --

12:20:06 20 A. The visual, is it?

12:20:07 21 Q. Yes, the outside trade dress, you might call
12:20:10 22 it, just in this case involving certain buttons and
12:20:12 23 lacing and ornamental designs on the outside. Have you
12:20:17 24 ever been told that that's what the designs that were at
12:20:19 25 issue in this case were?

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12:20:22 1 A. Not really. You know, I would have honestly
12:20:25 2 breezed over that because I don't see - you know, as I've
12:20:30 3 already stated, I don't really believe that design is
12:20:37 4 important. It never ever crossed my mind to register.
12:20:44 5 We invented the zip ugg boot, no-one had ever done ugg
12:20:49 6 boots with zips before. Now, I should have rushed out
12:20:53 7 and paid an attorney and got that registered, you know,
12:20:57 8 as the zip ugg boot, or something, but it never ever
12:21:02 9 crossed my mind, you know. I knew that within a period
12:21:04 10 of time all the opposition companies were going to go out
12:21:09 11 and do that.

12:21:14 12 Q. Have you ever spoken with Mr Bagley before
12:21:15 13 today's deposition?

12:21:18 14 A. No, I think we met for the first time last
12:21:23 15 night, yes.

12:21:25 16 Q. And what about - did you talk about today's
12:21:29 17 deposition?

12:21:29 18 A. Only about how it would go and this sort of
12:21:32 19 thing and who would have what time and - mmm.

12:21:36 20 Q. Did he show you any documents?

12:21:41 21 A. No.

12:21:42 22 Q. Did you meet him with Mr Bagley and Mr Terceiro
12:21:47 23 at the same time?

12:21:47 24 A. Yes.

12:21:48 25 Q. And last night did Mr Terceiro show you any

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12:21:50 1 documents?

12:21:52 2 A. No, not last night, no.

12:21:54 3 Q. You said you saw some of these documents
12:21:56 4 before. When was that? Today?

12:21:58 5 A. Well, this one was sent to me by your company.
12:22:03 6 That one was sent to me through the email. I never saw
12:22:07 7 that one, I didn't see that one, and I think I got that
12:22:11 8 one too, didn't I?

12:22:13 9 Q. The last one that you're referring to is
12:22:15 10 Exhibit 17?

12:22:17 11 A. 17, I think.

12:22:18 12 Q. You think you got that one. Was it by email?

12:22:21 13 A. 17. I've seen 14, 15, so it's really only 16
12:22:31 14 and 18 that I haven't seen.

12:22:33 15 Q. So 14, 15 and 17, did you get those all by
12:22:37 16 email?

12:22:37 17 A. Yes.

12:22:39 18 Q. Have you ever exchanged emails with Mr Bagley?

12:22:42 19 A. No.

12:23:09 20 Q. Before this deposition had you ever heard of
12:23:12 21 Deckers before?

12:23:13 22 A. No.

12:23:18 23 Q. Have you ever seen their brand, that u-G-g with
12:23:21 24 the big G in the middle?

12:23:23 25 A. No, never seen that, no.

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12:23:31 1 Q. Have you ever spoken with an Australian Senator
12:23:33 2 called Xenophoh, X-E-N-O-P-H-O-N?

12:23:38 3 A. Nick? He resides in - I have met Nick but I've
12:23:42 4 never spoken to him about this matter, no.

12:23:46 5 Q. Have you ever spoken to him about protections,
12:23:48 6 or lack thereof, for the word "ugg"?

12:23:54 7 A. No.

12:23:57 8 Q. Did Mr Terceiro or Mr Bagley ever ask you to
12:24:02 9 gather any documents to give to them or to produce in
12:24:05 10 this case?

12:24:07 11 A. I said - yes, I've said the only document that
12:24:09 12 I had at home, I did have one of our catalogues that we
12:24:16 13 had at the time and that was all I had. I had nothing -
12:24:20 14 no documents at all that I kept.

12:24:22 15 Q. Did you give a copy of that catalogue to them?

12:24:25 16 A. Yes.

12:24:27 17 Q. When did you give that to them?

12:24:29 18 A. Only today, this morning. I had it last night
12:24:33 19 but I didn't - it was up in my room, but I did bring it
12:24:36 20 today.

12:24:36 21 Q. You brought the actual catalogue or a copy of
12:24:39 22 it?

12:24:40 23 A. Yes, yes, the catalogue.

12:24:41 24 Q. Can I see it?

12:24:42 25 A. Yes, I'll have to go in the other room.

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12:24:46 1 MR RAYGOR: We can take a break.

12:24:48 2 MR BAGLEY: We'll go off the record.

12:24:49 3 VIDEOGRAPHER: Going off the record at 12.23pm.

4 (A short break)

12:24:55 5 [12.23pm]

12:26:16 6 VIDEOGRAPHER: Going back on the record at 12.41pm.

12:42:18 7 Proceed.

12:42:22 8 MR RAYGOR: So the next one - we're up to 19, it

12:42:25 9 looks like, Mark.

12:42:25 10 MR BAGLEY: I believe the next number is, yes, 19.

11 MR RAYGOR: Could we have this marked for

12 identification as Exhibit number 19, please.

13 (Exhibit 19 marked for identification)

12:42:55 14 MR BAGLEY: I believe you should keep that copy,

12:42:56 15 the one that was marked with a sticker.

16 THE DEPONENT: Oh, right.

12:42:58 17 MR BAGLEY: He's going to ask you about it.

12:43:01 18 THE DEPONENT: All right.

19 BY MR RAYGOR:

20 Q. I am going to ask you a few questions.

21 A. Yes.

12:43:02 22 Q. So before we took the break you mentioned that

12:43:04 23 you had, the only document you really had from that time

12:43:08 24 when you operated Comfort Plus was a catalogue and you

12:43:11 25 happen to have it and now we've made a coloured copy of

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12:43:14 1 it.

12:43:14 2 A. Yes.

12:43:15 3 Q. So thank you for that, it really helps put
12:43:18 4 things - it's always nice seeing a picture as well as
5 hearing the words.

6 A. Yes.

12:43:25 7 Q. Can you tell from this about when, what date
12:43:26 8 this was used or created?

12:43:34 9 A. I reckon it was - well, it's got to be after
12:43:40 10 1981.

12:43:44 11 Q. Why is that?

12:43:46 12 A. Well, on the back, "Our Story", it says, "The
12:43:50 13 demand increased for our products so much in the next two
12:43:54 14 years that it became necessary in January 1981 to move
12:44:00 15 office and factory to its current position ..." Okay?
12:44:05 16 And that's the photo of the office and factory.

12:44:11 17 Q. That's the new one in Edwardstown?

12:44:15 18 A. Yes, that's the one, yes.

12:44:17 19 Q. Okay.

12:44:17 20 A. So it's got to be after we shifted there, so -
12:44:21 21 and that was in '81, so, yes.

12:44:24 22 Q. And you called this a catalogue. What did you
12:44:28 23 use this for?

12:44:29 24 A. The prime use was for - because we were dealing
12:44:34 25 with all the Trade Commissioners, it was aimed at the

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12:44:38 1 export market. The local market didn't matter too much,
12:44:42 2 you could take your product there and everything else,
12:44:44 3 but the export market, they advertised in all their
12:44:52 4 newsletters that went out to various companies in various
12:44:57 5 countries and the first thing they'd ask for is a
12:45:04 6 catalogue: "Can you send us a catalogue?" So we
12:45:10 7 produced this catalogue with the Government's assistance
12:45:13 8 and they paid for 80 per cent of it, so --

12:45:17 9 Q. Why would the Government pay for 80 per cent?

12:45:19 10 A. Because they were really hitting on the export
12:45:21 11 market. They had a thing here called the Export Grants
12:45:26 12 Scheme and whatever my travel was in connection with our
12:45:32 13 product, once you were an approved product or company
12:45:37 14 with the Australian trade, then you were eligible for
12:45:45 15 their Export Grants Scheme and that involved any
12:45:51 16 movement, plane, train, car, taxi, whatever, any movement
12:45:57 17 at all anywhere in the world and you got 80 per cent of
12:46:00 18 it back straight away. The other 20 per cent was tax
12:46:05 19 deductible, but you got 80 per cent back straight away.

12:46:10 20 Q. Wow.

12:46:10 21 A. And we did the - we did the good part of the
12:46:13 22 world on that basis and I did work.

12:46:21 23 Q. So essentially, it was a way to help
12:46:23 24 incentivize Australian companies to export their product?

12:46:26 25 A. That's right. They could see that Australia

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12:46:30 1 needed to be exporting more than what they were and so -
12:46:36 2 but I mean companies, some companies tried, you know, and
12:46:40 3 they just sort of said, "Well, why would anybody buy
12:46:43 4 that?", you know, in other countries, but with our
12:46:48 5 product they jumped at it and said, "Well, you know,
12:46:51 6 sheepskins, there's more sheep in Australia than anywhere
12:46:55 7 else in the world. You know, why wouldn't we push this
12:46:58 8 product?", you know.

12:46:59 9 Q. Do you recall if you sent this particular
12:47:02 10 catalogue to the US?

12:47:04 11 A. Yes. Yes.

12:47:06 12 Q. Did you have it available at your stores in the
12:47:08 13 US?

12:47:09 14 A. Yes, it was, yes, mmm.

12:47:12 15 Q. I saw that there's a mention on the back cover
12:47:15 16 of it also, which is the last page of this Exhibit 19 --

12:47:18 17 A. Yes.

12:47:19 18 Q. -- about - in the upper right-hand corner
12:47:23 19 there's a paragraph, "In 1978 Comfort-Plus Pty. Ltd.
12:47:29 20 entered the export market and soon established sales in
12:47:33 21 U.S.A, Japan and various other countries where quality
12:47:37 22 sheepskin products were in demand"?

12:47:41 23 A. Yes.

12:47:42 24 Q. Apart from Japan, what other countries were you
12:47:45 25 exporting to? I mean, many or --

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12:47:48 1 A. Germany, a little bit in Germany, a little bit
12:47:54 2 in England, but primarily it was Japan and USA, they were
12:47:59 3 our biggest markets. The Japanese loved the car seat
12:48:06 4 covers. They didn't go for the boots so much, but they
12:48:09 5 were big on the car seat cover side of things.

12:48:12 6 Q. And as far as the boots, was that bigger in the
12:48:14 7 US than anywhere else?

12:48:16 8 A. Yes. Yes.

12:48:18 9 Q. Of your sales as a wholesaler, can you estimate
12:48:22 10 for me how much of it was overseas versus domestic, and
12:48:28 11 I'm talking over all your product categories, if you can
12:48:32 12 just answer that, and then I'll try to break it down?

12:48:34 13 A. No, no, so all products - I would say the last
12:48:50 14 year before I sold there was - our sales was \$4.6 million
12:48:58 15 and I would estimate that 1.5 of that would be overseas.

12:49:04 16 Q. So the bulk of it, the great bulk was in
12:49:07 17 Australia?

12:49:08 18 A. Yes, yes.

12:49:08 19 Q. And you said 4.7 million in sales, Australian
12:49:13 20 dollars?

12:49:14 21 A. 4.6 Australian dollars.

12:49:16 22 Q. 4.6?

12:49:18 23 A. Yes.

12:49:18 24 Q. Okay. And then of that can you tell me how it
12:49:21 25 breaks down, like car seat covers versus footwear versus

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12:49:25 1 coats and vests?

12:49:27 2 A. Overseas?

12:49:30 3 Q. No, just the entire product first?

12:49:34 4 A. Oh, the entire product. Well, I think it was
12:49:39 5 pretty much the same as in the shops over there.

12:49:44 6 70 per cent was in footwear and that would be overall,
12:49:51 7 that's our local market. I mean Skinny Hideout here in
12:49:57 8 Sydney, for instance, they used to spend about 1.5,
12:50:04 9 \$1.6 million a year all in footwear.

12:50:08 10 Q. Did you ever do another version of this
12:50:09 11 catalogue, like an updated one?

12:50:11 12 A. No, no, no.

12:50:13 13 Q. Just the one?

12:50:14 14 A. Yes, just the one, mmm.

12:50:15 15 Q. Did you ever advertise elsewhere other than
12:50:18 16 with this catalogue? Did you advertise television?

12:50:21 17 A. No.

12:50:22 18 Q. Radio?

12:50:23 19 A. No, never did.

12:50:25 20 Q. Newspaper?

12:50:26 21 A. No. We were in the Yellow Pages, but that was
12:50:29 22 primarily for our four retail shops in Adelaide.

12:50:34 23 Q. I don't know if they have them here, but swap
12:50:37 24 meets, things like that?

12:50:39 25 A. Swap meet?

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12:50:41 1 Q. A flea market?

12:50:44 2 A. Oh, flea markets?

12:50:46 3 Q. Yes.

12:50:46 4 A. No, never got involved in that.

12:50:48 5 Q. A swap meet might be an American version of a
12:50:51 6 flea market.

12:50:52 7 A. Yes, I think I know the one in America, yes.

12:50:55 8 Q. Okay.

12:50:55 9 A. That's where a lot of our product was sold.

12:51:06 10 Q. Moving on, have you ever done any consumer
12:51:15 11 surveys to find out - like, taking a group of consumers
12:51:22 12 and finding out what they're interested in buying from
12:51:25 13 you, did you ever do that in connection with
12:51:28 14 Comfort Plus?

12:51:28 15 A. No, never did, no.

12:51:30 16 Q. Did you ever have any questionnaires that you
12:51:32 17 asked customers of yours to fill out about "What do you
12:51:36 18 like about my product and my company? What don't you
12:51:39 19 like"?

12:51:39 20 A. No, never did.

12:51:41 21 Q. Nothing like that?

12:51:41 22 A. No.

12:51:42 23 Q. Have you ever done any sort of study to
12:51:44 24 determine what people, what consumers in the US thought
12:51:52 25 as far as the term "ugg", what it meant when you were

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12:51:56 1 selling product there?

12:52:02 2 A. No, we didn't - now, whether the managers of
12:52:08 3 these shops did, they certainly didn't report anything to
12:52:12 4 me. As I say, it was just - I never thought too much
12:52:20 5 about it.

12:52:21 6 Q. Do you have any basis, as you sit here today,
12:52:24 7 for knowing what consumer perceptions were in, say, 1978
12:52:29 8 in the US of what the word "ugg" meant in the US?

12:52:33 9 A. No.

12:52:33 10 Q. How about 1979?

12:52:36 11 A. Not really, no.

12:52:38 12 Q. How about let me just say --

12:52:40 13 A. Other than - other than the fact that they
12:52:42 14 liked the ugg boots that we sold, because they sold very
12:52:46 15 well, you know.

12:52:48 16 Q. But as far as - do you have any idea of, like,
12:52:52 17 what consumers in general in Southern California thought
12:52:56 18 about the term "ugg" in 1979?

12:53:04 19 A. Not really. I recall talking to somebody about
12:53:09 20 it, whether it was someone from our shops or whether it
12:53:12 21 was a client in the shops, and they said, "Where does the
12:53:20 22 term come from?", and I told them the same story as
12:53:24 23 I told you today where I heard it. It obtained its name
12:53:31 24 from a woman's perception that it was an ugly boot,
12:53:35 25 you know.

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12:53:36 1 Q. And this was some discussion you had with a
12:53:39 2 customer of yours in the US?

12:53:40 3 A. In the US, in the shops, yes, but no, not a -
12:53:47 4 that was the prime thing. They - they - you know, it had
12:53:52 5 a big sign in each of the shops that they were ugg boots
12:53:56 6 and, you know, they were made in Australia by
12:53:59 7 Comfort Plus.

12:54:01 8 Q. What did the sign look like?

12:54:03 9 A. Oh, just a cardboard sign that you would have
12:54:07 10 in your products, like, you know, coats here, ugg boots
12:54:12 11 there, slippers here, that sort of thing, you know.

12:54:16 12 Q. Did you ever see the sign?

12:54:17 13 A. Oh, yes, yes.

12:54:19 14 Q. Do you have photographs of it?

12:54:20 15 A. No.

12:54:23 16 Q. What did it say exactly on the sign, as best
12:54:27 17 that you can remember?

12:54:28 18 A. Just like I said, "ugg boots".

12:54:30 19 Q. And all in caps?

12:54:33 20 A. "Slippers", "Coats".

12:54:37 21 Q. All in - and were the two words "ugg boots" all
12:54:39 22 in capitals?

12:54:40 23 A. Yes, they were, yes, mmm.

12:54:43 24 Q. And then you would have a sign like in the
12:54:45 25 slipper section of the shelves that would say "Slippers";

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12:54:50 1 is that right?

12:54:50 2 A. Yes.

12:54:51 3 Q. And "Coats"?

12:54:52 4 A. "Coats", "Seat Covers", this sort of thing,
12:54:55 5 just normal advertising in a shop.

12:54:59 6 Q. And then people, if they saw this - when people
12:55:02 7 saw the sign "UGG BOOTS", all in capitals, would people
12:55:08 8 ask, "What is that? What does it mean?"

12:55:12 9 A. Not really.

12:55:13 10 Q. Who created the signs, did you or somebody,
12:55:16 11 your managers at the shops?

12:55:18 12 A. No, this Garren McPhee, that I had running the
12:55:21 13 show over there, he did all that sort of thing.

12:55:28 14 Q. Apart from these four stores in the Los Angeles
12:55:33 15 area, do you have any knowledge of what consumers
12:55:35 16 elsewhere in the country thought or might have thought
12:55:39 17 about the term "ugg", what it meant, or where it came
12:55:44 18 from?

12:55:44 19 A. Not really, no.

12:55:52 20 Q. Did you ever attend any trade shows in the US?

12:55:57 21 A. I went to one in about '75, I think, in
12:56:07 22 Chicago, the Aftermarket, Automotive Aftermarket Show.

23 Q. Automotive Aftermarket?

24 A. Yes.

12:56:13 25 Q. All because of the seat covers?

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12:56:15 1 A. Yes. We didn't have a stand there, I just went
12:56:20 2 over to have a look, see it, you know.

12:56:26 3 Q. Was that in connection with B&H Manufacturing
12:56:31 4 or Comfort Plus?

12:56:32 5 A. No, that was Comfort Plus by then, yes.

12:56:35 6 Q. And as far as what you showed at that
12:56:37 7 trade show, was it just seat covers?

12:56:39 8 A. No, we didn't show anything. I only went to
12:56:42 9 have a look to see what it was all about.

12:56:44 10 Q. Oh, okay, you didn't exhibit. Did you ever
12:56:46 11 attend a trade show in the US as an exhibiter?

12:56:50 12 A. No.

12:56:51 13 Q. Have you ever attended a trade show in the US
12:56:53 14 involving footwear?

12:56:55 15 A. No.

12:56:57 16 Q. Have you ever heard of the Western Shoe
12:56:59 17 Association?

12:57:02 18 A. No.

12:57:03 19 Q. Now known as the World Shoe Association?

12:57:06 20 A. No. No. No.

12:57:10 21 Q. Did you ever attend anything of the Action
12:57:12 22 Sport Retailers Show or ever hear of it?

12:57:15 23 A. No.

12:57:15 24 Q. Have you ever heard of FFANY, which is an
12:57:19 25 acronym for Fashion Footwear Association of New York?

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12:57:23 1 A. No.

12:57:34 2 Q. Were you, on these five or six, maybe seven
12:57:37 3 trips that you took to the US, from that first trip,
12:57:40 4 trying to line up an importer --

12:57:44 5 A. Yes.

12:57:45 6 Q. -- in connection with your stores? Did you
12:57:47 7 ever visit other places selling footwear?

12:57:54 8 A. No, I didn't, because my first trip was
12:57:57 9 primarily on car seat covers, so that the only places
12:58:06 10 that I went to were people that sold car seat covers.

12:58:12 11 Q. You mentioned JC - you didn't say JCs, you
12:58:18 12 mentioned Penneys?

12:58:19 13 A. Penneys, yes.

12:58:20 14 Q. Was Penneys somebody you were talking to or
12:58:22 15 visited?

12:58:23 16 A. Yes, yes, I went to see them.

12:58:24 17 Q. Was that about seat covers?

12:58:26 18 A. Yes, seat covers, yes.

12:58:27 19 Q. Okay. When you had these four shops in the
12:58:30 20 Los Angeles area, did you ever visit any action sports
12:58:35 21 shops, like ski shops or surf shops or shoe shops or
12:58:40 22 anything like that?

12:58:40 23 A. No, no, no, I had no call to, mmm.

12:58:57 24 Q. Bear with me a moment, I might be just about
12:59:00 25 done, I'm just looking at my notes.

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12:59:03 1 A. No, no, that's fine.

12:59:06 2 VIDEOGRAPHER: Five minutes.

3 THE DEPONENT: Was this mine, was it?

4 MR BAGLEY: That copy was not mine, so I --

5 MR RAYGOR: If it's black, I think it's mine.

6 THE DEPONENT: Oh, right, yes, you might have left

7 it there when you picked the catalogue up, fine.

8 BY MR RAYGOR:

12:59:26 9 Q. Have you ever seen any documents concerning the

12:59:29 10 registrations that Deckers has in the US that include the

12:59:33 11 word "ugg", the trademark registrations?

12:59:36 12 A. No, no, I haven't, no.

12:59:39 13 Q. Has anybody ever told you anything about them?

12:59:42 14 A. Not really.

12:59:42 15 Q. Their legal status or anything like that?

12:59:45 16 A. No.

13:00:27 17 Q. Have you ever heard of Journal of Commerce?

13:00:37 18 Journal of Commerce?

13:00:40 19 A. No.

13:00:41 20 Q. I ask the court reporter to mark for

13:00:43 21 identification as Exhibit 20 a document that we just

13:00:51 22 printed out only a few days ago from the internet.

13:01:15 23 A. (Shown to deponent)

13:01:21 24 (Exhibit 20 marked for identification).

25

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1 BY MR RAYGOR:

13:01:22 2 Q. It will help to focus because there's a lot of
13:01:24 3 small print on here.

13:01:25 4 A. Yes. No, that's all right.

13:01:26 5 Q. So you see under "JOC.COM" and then the next
13:01:29 6 thing says "Import Leads", at the very top of the page?

13:01:34 7 A. On the front page of --

13:01:35 8 Q. Yes, in big letters, JOC.COM?

13:01:40 9 A. Oh, yes, yes, yes, yes, here we go, yes.

13:01:41 10 Q. And in the first paragraph it says, "Suppliers
13:01:44 11 of the following items seek U.S. importers/distributors.
13:01:49 12 Interested parties are asked to contact these suppliers
13:01:53 13 directly. The Journal of Commerce assumes no
13:01:56 14 responsibility...", et cetera. Do you see that?

13:02:00 15 A. Yes.

13:02:00 16 Q. Down below, the third paragraph, it says,
13:02:05 17 "Skins, Sheepskin and sheepskin products"?

13:02:09 18 A. Oh.

13:02:10 19 Q. "Contact Comfort Plus Pty Ltd"?

13:02:12 20 A. Oh, this is a very old catalogue then.

13:02:17 21 Q. How long did you have that address in
13:02:19 22 Edwardstown?

13:02:23 23 A. Up until it closed down. I had it in - what
13:02:28 24 did I say? It says on the back here. Yes, January '81
13:02:37 25 we shifted into the Edwardstown factory, a bigger

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13:02:42 1 factory, and it was there I retired in '82 - '85, yes, so
13:02:53 2 in '86 and it only lasted about another 18 months after
13:03:02 3 that and it would have been closed down.

13:03:06 4 Q. So the --

13:03:07 5 A. So when's this? This says 2017.

13:03:12 6 Q. This is something that is printed out now.

13:03:15 7 I have no idea, I can't tell you --

13:03:17 8 A. Well, it's got - there's a date up the top: it
13:03:20 9 says it's Friday, March the 31st, 2017.

13:03:24 10 Q. And if you look at the very bottom, you see
13:03:27 11 where it's an http?

13:03:30 12 A. Yes.

13:03:30 13 Q. An indication at the very end of it, it has a
13:03:32 14 date of June 13, 1988?

13:03:35 15 A. Oh, 1988.

13:03:40 16 Q. I don't know - I mean, I didn't create this
13:03:42 17 document, I have no idea who is republishing this.

13:03:46 18 A. Yes.

13:03:46 19 Q. But do you know if the Comfort Plus business
13:03:50 20 stayed at that address on Conmurra Avenue in Edwardstown,
13:03:56 21 South Australia, until 1988?

13:03:58 22 A. Not in 1988 they didn't, no, they would have
13:04:03 23 been closed.

13:04:04 24 Q. So whatever this document is, it's talking
13:04:05 25 about - it's soliciting US distributors?

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13:04:09 1 A. Yes. Well, we would have --

13:04:10 2 Q. Did you ever have --

13:04:11 3 A. We would have --

13:04:13 4 Q. Did you ever have a US distributor?

13:04:15 5 A. No, we didn't, no. We dealt through the
13:04:18 6 Trade Commissioners only in each country and they were
13:04:24 7 supposed to come up with people that would be interested
13:04:28 8 in our products. JOC. that's amazing.

13:04:36 9 MR RAYGOR: Do you want to make a change now of the
13:04:39 10 tape?

13:04:39 11 VIDEOGRAPHER: Yes, I think that would be a good
13:04:42 12 idea.

13:04:43 13 MR RAYGOR: I could hear you breathe.

13:04:46 14 VIDEOGRAPHER: Okay. Going off the record at
13:04:48 15 1.03pm. End of tape 2.

16 (A short break)

13:04:54 17 [1.03pm]

13:07:42 18 VIDEOGRAPHER: Going back on the record at 1.06pm.
13:07:45 19 Commencement of tape 3. Proceed.

20 BY MR RAYGOR:

13:07:50 21 Q. We looked at that Exhibit 20 and I asked some
13:07:53 22 questions. Does it ring any bells as to you ever having
13:07:56 23 heard of that kind of organisation, the Journal of
13:07:58 24 Commerce, or what this might have come from?

13:08:01 25 A. No, unless it's something that they work in

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13:08:04 1 conjunction with the Australian Trade Commissioner in
13:08:10 2 Los Angeles, or something like that.

13:08:12 3 Q. Okay.

13:08:12 4 A. That's the only thing I can assume. That's -
13:08:17 5 everything we did, any promotion or seeking assistance
13:08:23 6 was always done through the Trade Commissioner, but this
13:08:31 7 doesn't seem right. Even the date "www" wasn't invented
13:08:36 8 in '88, was it. It was a bit later than that.

13:08:43 9 Q. Next, I'll ask the court reporter to mark for
13:08:45 10 identification as Exhibit 21 a single page really poorly
13:08:50 11 photocopied version of - I'll let you tell me what it is
13:09:19 12 and it has a production number on the bottom of
13:09:24 13 DEK023113?

13:09:26 14 A. Thank you. (Shown to deponent)
13:09:28 15 (Exhibit 21 marked for identification)

13:09:32 16 Q. Can you tell me what this looks like to you?

13:09:37 17 A. It looks like a photocopy of the front part -
13:09:54 18 well, I'd say different parts have been taken out of the
13:09:59 19 catalogue. I'm just reading what it says here: "...have
20 been manufacturing sheepskin products for nearly a decade
13:10:18 21 and has the staff, equipment ..." Yes, "33", yes.

13:10:25 22 Q. Does it look like it - let me just --

13:10:28 23 A. It looks to me like the Australian
13:10:33 24 Trade Commissioner has done a bit of a flyer, myself.
13:10:38 25 I don't recall that. As I said, all we did was put it in

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13:10:45 1 the hands of the Trade Commissioner and they were to send
13:10:48 2 us back, from various countries they were to send us back
13:10:53 3 people that were inquiring about a catalogue, so whether
13:10:57 4 they put out a flyer like that I don't know. It
13:11:00 5 certainly wasn't one of ours, one - something that I put
13:11:04 6 together, no.

13:11:07 7 Q. So this doesn't look familiar to something that
13:11:09 8 you did?

13:11:10 9 A. No. No.

13:11:11 10 Q. If you look under the top where it says
13:11:13 11 "Comfort Plus Pty Ltd"?

13:11:15 12 A. Yes.

13:11:15 13 Q. Underneath it, it says, "Comfort-Plus have been
13:11:20 14 manufacturing sheepskin products for nearly a decade and
13:11:24 15 has the staff, equipment and expertise to produce volume
13:11:28 16 orders of high quality products demanded by Australian
13:11:31 17 and overseas markets. Write for a full colour brochure
13:11:38 18 and price list"?

13:11:39 19 A. Yes, which would be that.

13:11:41 20 Q. And that would be the exhibit, 19, that you
13:11:42 21 just held up, the full-colour brochure and price list?

13:11:47 22 A. Yes, that was the only full colour one we did.
13:11:52 23 We did produce, prior to that, one, a black and white
13:11:56 24 catalogue, but this obviously is the full colour one.
13:12:07 25 They've got the address right and the telephone and the

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13:12:13 1 telex. This is pre-faxes days and computer, you know.

13:12:19 2 Q. Did you ever do anything - it's like a one-page
13:12:22 3 flyer - along these lines?

13:12:24 4 A. No.

13:12:38 5 Q. And also, it's interesting, it's really hard to
13:12:40 6 see in Exhibit 21, but the photograph under
13:12:44 7 "Luxury Sheepskin Products" is a woman in the same
13:12:48 8 position, it looks like, on maybe even the same seat, but
13:12:55 9 different boots, different hair?

13:12:56 10 A. Yes, it's the same - it's got the same suit -
13:12:59 11 the same seat, car seat, it's a tailor-made car seat
13:13:05 12 cover that she's on there and --

13:13:07 13 Q. But the boots are displayed differently, it
13:13:09 14 looks like, and the hair?

13:13:10 15 A. Yes, the boots are different, yes, they've
13:13:13 16 taken some of the bigger ones out and somebody has played
13:13:16 17 around with the catalogue and put this flyer out and
13:13:20 18 I would think that it would be the Trade Commissioner,
13:13:26 19 I would think, has done this and whizzed this off to
13:13:33 20 markets or people that they consider might be interested.

13:13:37 21 Q. Is there anything in this that you consider
13:13:39 22 inaccurate? You said you'd talked about the telex number
13:13:44 23 and the phone, that's all.

13:13:45 24 A. No, no, it's all, it's all accurate.

13:13:50 25 Q. Okay. I next ask the court reporter to mark as

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13:13:52 1 Exhibit 22 a document that was filed in the court in
13:13:59 2 Chicago in this lawsuit.

13:14:22 3 A. (Shown to deponent)
13:14:28 4 (Exhibit 22 marked for identification)

13:14:38 5 Q. Just to put it a bit in context, you see that
13:14:41 6 at the very top there's a header that says, "Case: 1:16",
13:14:46 7 do you see that, at the very top of the page?

13:14:52 8 A. Oh, yes, yes.

13:14:53 9 Q. I'll just reference to you that this is
13:14:55 10 something that I printed from the court's electronic
13:14:58 11 website.

13:14:59 12 A. Yes.

13:14:59 13 Q. And it shows that this was a document filed
13:15:02 14 probably by your attorney, well, not your attorney, by
13:15:05 15 Mr Bagley, with the court, and the second page has a
13:15:11 16 court caption on it and underneath the title of this
13:15:14 17 document is "Declaration of Roger Bosley", and then
13:15:18 18 there's a signature on the last page?

13:15:20 19 A. Yes.

13:15:22 20 Q. Could you just look at the last page - is that
13:15:24 21 your signature?

13:15:29 22 A. Oh, sorry, that's not the last page. Yes,
13:15:31 23 that's my signature, yes.

13:15:33 24 Q. Do you recall seeing this document before you
13:15:35 25 signed it?

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13:15:38 1 A. Yes, certainly, mmm.

13:15:41 2 Q. Did you write it?

13:15:42 3 A. No, I didn't write it. It was from information
13:15:46 4 given over the phone. No, I think I read through it and
13:15:59 5 signed it and emailed it back, from memory, yes, to my
13:16:05 6 knowledge.

13:16:05 7 Q. Emailed it back to whom, to Mr Bagley or
13:16:08 8 Mr Terceiro?

13:16:09 9 A. No, no, it was done locally. You've sent it
13:16:13 10 on to America, mmm.

13:16:13 11 Q. I'm sorry, to Mr Terceiro?

13:16:15 12 A. Yes.

13:16:19 13 Q. Were there any changes that you made to it
13:16:21 14 after the first version - let me start over. Did you see
13:16:24 15 more than one version of this, for example, an initial
13:16:29 16 draft and then some changes and a subsequent draft?

13:16:33 17 A. I only saw one.

13:16:34 18 Q. And it is the one you signed here?

13:16:36 19 A. Yes.

13:16:38 20 Q. And the information that's contained in it,
13:16:40 21 where did that information come from?

13:16:47 22 A. Oh, from information I'd given on the phone,
13:16:50 23 I guess, yes, yes.

13:16:52 24 Q. Information to Mr Terceiro?

13:16:54 25 A. Yes.

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13:17:17 1 Q. Do you see in paragraph 3 it says, "In 1975
13:17:23 2 I started a business called Comfort Plus, which
13:17:26 3 manufactured and sold a wide range of sheepskin products,
13:17:31 4 including ugg boots." Do you see that?

13:17:34 5 A. Yes.

13:17:34 6 Q. Earlier you testified that that was 1973.
13:17:38 7 Which one is it? When did the business start, in '75?

13:17:42 8 A. '73 and in '75 was changed from
13:17:46 9 B&H Manufacturing to Comfort Plus.

13:17:49 10 Q. Earlier today you said that it started out as
13:17:54 11 B&H --

13:17:55 12 A. Yes, that's right.

13:17:56 13 Q. -- in 1973 and six months later it was changed
13:17:58 14 to Comfort Plus?

13:18:17 15 A. Could be. You know, you've got to remember
13:18:20 16 I've got no documents and it's 30-odd years ago, so
13:18:25 17 you're bound to get your dates mixed up.

13:18:28 18 Q. Okay. No, I appreciate that.

13:18:30 19 A. I mean, it could have been six months, it could
13:18:34 20 have been two years. It's not something you file away in
13:18:38 21 your memory bank, you know.

13:18:44 22 Q. On number 4 --

13:18:45 23 A. And it really doesn't have any bearing on it,
13:18:48 24 does it, really, if it's - no.

13:18:50 25 Q. Okay. Number 4 says, "Comfort Plus" -

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13:18:53 1 number 4, I mean paragraph 4: "Comfort Plus began
13:18:54 2 exporting ugg boots to the United States and Japan in
13:18:59 3 1978"?

13:18:59 4 A. Yes.

13:18:59 5 Q. Did that first export happen in both places at
13:19:03 6 the same time, in the same year?

13:19:08 7 A. Pretty much, yes.

13:19:15 8 Q. When you first - do you recall the first export
13:19:18 9 to the US?

13:19:20 10 A. Do I recall it?

13:19:21 11 Q. Yes. To whom it was or where?

13:19:27 12 A. Oh, no.

13:19:27 13 Q. Was it an individual or a store, do you recall?

13:19:30 14 A. No, it was a store. There was a group - there
13:19:40 15 was a group of Australians or an Australian solicitor,
13:19:45 16 no, it wasn't a solicitor, he was an accountant, that was
13:19:51 17 establishing or went over there to establish a shop and
13:20:00 18 all of his clients or quite a number of his clients were
13:20:08 19 using this as a tax dodge for export and I think I dealt
13:20:15 20 with him on a number of occasions. That's a fellow
13:20:19 21 called Simmons, Robert Simmons.

13:20:25 22 Q. And do you think that was 1978?

13:20:27 23 A. I think it was, yes; it was before we started
13:20:29 24 our shops anyway.

13:20:33 25 Q. Could you - like, we talked about the six

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13:20:35 1 months versus two years. Could it be two years, one way
13:20:39 2 or the other, from '78? It could be '76, it could be
13:20:43 3 '80?

13:20:44 4 A. I think it's more likely to be '78, I think,
13:20:51 5 than '80.

13:20:52 6 Q. By you don't have any way of knowing exactly?

13:20:55 7 A. No, no, I - you know, it's only what I can
13:20:59 8 remember, you know.

13:21:00 9 Q. Somewhere in that time frame in the late
13:21:03 10 '70s --

11 A. Yes.

13:21:04 12 Q. -- early '80s?

13:21:07 13 A. That's right.

13:21:15 14 Q. Could you read paragraph number 5 to yourself?

13:21:20 15 A. Yes.

13:21:28 16 Q. Is there anything in there that you think, as
13:21:30 17 you sit here now, is inaccurate?

13:21:33 18 A. Once again, probably the - yes, I think - I'm
13:21:40 19 pretty sure it would be around '82, yes. No, no, no, no,
13:21:47 20 it's probably a little earlier than '82, yes.

13:21:51 21 Q. Is that the four retail stores in --

13:21:53 22 A. Yes, the - yes, because, you know, bear in mind
13:21:56 23 I sold the business in '82 or '83.

13:22:00 24 Q. And you said the stores had been opened for
13:22:03 25 about 18 months --

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1 A. Yes.

13:22:04 2 Q. -- maybe two years?

13:22:05 3 A. Yes.

13:22:06 4 Q. So it could have been in 1980 or thereabouts?

13:22:09 5 A. Yes, it could have - yes, it could have been,
13:22:12 6 mmm.

13:22:15 7 Q. And then in the next paragraph, number 6, you
13:22:17 8 say, "In 1984 I sold Comfort Plus to Charlie Zuker."
13:22:32 9 Does that sound accurate?

13:22:38 10 A. The year, the length of years is right because
13:22:42 11 I worked on for three years, so '84 to '87.

13:22:53 12 Q. But it could be '83, '86, something like that?

13:22:56 13 A. It could be '83, mmm.

13:23:23 14 Q. Let me just talk with my colleague for a minute
13:23:25 15 or two off the record and then I'm going to - I think I'm
13:23:29 16 done, but I just want to make sure.

13:23:31 17 A. Yes.

13:23:33 18 VIDEOGRAPHER: Going off the record at 1.22pm.

19 (A short break)

13:23:38 20 [1.22pm]

13:26:49 21 VIDEOGRAPHER: Going back on the record at 1.25pm.
13:26:52 22 Proceed.

13:26:56 23 MR RAYGOR: What did I say this last one was? Was
13:26:58 24 that exhibit - the Declaration was Exhibit 21?

13:27:01 25 VIDEOGRAPHER: 22.

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13:27:03 1 MR RAYGOR: 22.

13:27:06 2 THE DEPONENT: Yes.

3 BY MR RAYGOR:

13:27:07 4 Q. Going back to exhibit 22 there, the
13:27:09 5 Declaration --

13:27:10 6 A. Yes.

13:27:11 7 Q. -- look at the first - I guess the second page
13:27:17 8 of it and down in paragraph 6, about the sale to
13:27:21 9 Charlie Zuker?

13:27:21 10 A. Yes.

13:27:22 11 Q. Is that the correct spelling of his name?

13:27:24 12 A. The correct spelling of his name? Yes.

13:27:32 13 Q. Is it - I thought you earlier said it was
13:27:34 14 Z-U-K-E-R?

13:27:35 15 A. Oh, you're right, no, it is Z-U-K-E-R, yes,
13:27:40 16 there's no "C" in there.

13:27:42 17 Q. Okay. Look over the next page. Do you see
13:27:56 18 paragraph 10?

13:27:57 19 A. 10, yes.

13:27:58 20 Q. It says, "The Deckers lawyer called me on a
13:28:01 21 second occasion last week and said largely the same
13:28:05 22 things as he did no [sic] the first occasion." Did you
13:28:12 23 notice that there was a typo there? What do you think
13:28:15 24 that is, "did know the first occasion"?

13:28:19 25 A. "Did" - no. Oh, I think that's supposed to be

13:28:22 1 just "on". "On".

13:28:24 2 Q. You didn't notice that when you signed this
13:28:26 3 page?

13:28:27 4 A. I didn't notice it when I signed it, no.

13:28:30 5 Q. Did you sign this page, then, with that typo in
13:28:34 6 it?

13:28:34 7 A. Yes.

13:28:34 8 Q. Would you turn to the next page? Do you see
13:28:35 9 the one you signed actually corrected that typo? Look at
13:28:39 10 paragraph 10. Now it says "as he did on the first
13:28:43 11 occasion".

13:28:47 12 A. Yes.

13:28:49 13 Q. So you did get at least one draft with
13:28:51 14 corrections on it?

13:28:59 15 A. I got all of these, yes. Oh, yes, I think
13:29:03 16 there was - from memory, there was a hiccup with the -
13:29:13 17 and another page came through, yes.

13:29:14 18 Q. From Mr Terceiro?

13:29:16 19 A. Yes.

13:29:18 20 Q. And when you signed this were you in Adelaide?

13:29:21 21 A. Yes.

13:29:24 22 Q. Adelaide - how far is Adelaide from Melbourne?

13:29:28 23 A. Oh, 700ks, yes.

13:29:33 24 Q. It says on the page, the last page where your
13:29:35 25 signature is, you signed it at Melbourne, Victoria.

13:29:41 1 Which was it, Melbourne or Adelaide?

13:29:44 2 A. It was Adelaide.

13:29:46 3 Q. You didn't travel to Melbourne to sign this?

13:29:48 4 A. No, no, no, no. There's probably a number of
13:30:11 5 things that need to be altered there, on there.

13:30:19 6 Q. I don't want to dwell on this too much, but on
13:30:23 7 the last page --

13:30:24 8 A. Yes.

13:30:24 9 Q. -- do you see above the place where it says
13:30:28 10 "Melbourne", it says, "I declare under penalty of perjury
13:30:32 11 that the above statements are, to the best of my
13:30:35 12 knowledge, true and accurate"?

13:30:36 13 A. Yes.

13:30:37 14 Q. Has anybody explained to you what that means to
13:30:41 15 sign under penalty of perjury in a US court?

13:30:47 16 A. Yes. Yes. Yes.

13:30:47 17 Q. What was the explanation?

13:30:49 18 A. Oh, well, I know what the explanation is of
13:30:51 19 perjury under law, but there's such a thing as an honest
13:30:55 20 mistake too.

13:30:57 21 Q. And so there are some honest mistakes in here?

13:30:59 22 A. Well, yes, and at the end of the day, does it
13:31:02 23 really affect anything?

13:31:07 24 Q. We will find out, I guess.

13:31:09 25 A. I mean, I looked for where I had to sign.

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13:31:15 1 I can't say that I read every single thing. I browsed
13:31:19 2 through it and --

13:31:21 3 Q. But you didn't type it up yourself; correct?

13:31:24 4 A. No. No. No.

13:31:26 5 Q. Going back to Exhibit 19, this is the colour
13:31:31 6 brochure?

13:31:32 7 A. Oh, yes, yes, yes.

13:31:35 8 Q. I think you said - forgive me if I ask it again
13:31:38 9 and you've already answered - this was for export
13:31:40 10 purposes?

13:31:41 11 A. Yes, it was.

13:31:42 12 Q. And it was some sort of - what was the
13:31:44 13 government agency that paid the 80 per cent?

13:31:49 14 A. The Department of Overseas Trade it was at that
13:31:51 15 stage, yes.

13:31:52 16 Q. So this was directed to overseas customers?

13:31:55 17 A. Yes.

13:31:55 18 Q. Not to domestic Australian?

13:31:58 19 A. Well, if we wanted to we could, mmm.

13:32:01 20 Q. But its primary --

13:32:03 21 A. Primarily, it was developed for overseas, yes.

13:32:06 22 Q. And outside of Australia at this time period
13:32:11 23 that this thing was distributed, "this thing" being
13:32:14 24 Exhibit 19, did people outside Australia know what
13:32:17 25 ugg boots were generally?

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13:32:28 1 A. It depends on the country. In Britain they
13:32:32 2 certainly did, Japan, yes, Germany, yes, certainly.

13:32:40 3 Q. How about in the US?

13:32:41 4 A. In the US? Well, nobody seemed at the least
13:32:52 5 concerned at what the name ugg boot was or anything else.
13:32:57 6 I think they were well aware of what they were, yes.

13:33:02 7 Q. How do you - what do you base that on, that
13:33:05 8 people were aware of what they were, ugg boots?

13:33:08 9 A. Nobody wrote to me and said, "What is an
13:33:12 10 ugg boot?", you know.

13:33:17 11 Q. And do you - did you note that nowhere in this
13:33:20 12 document does the term "ugg" appear?

13:33:23 13 A. Yes, I thought you would ask me that, and it
13:33:27 14 was done for a very good reason. At the time of print of
13:33:30 15 this catalogue we had that guy roaming around Australia
13:33:35 16 trying to register the word "ugg" and it was up for - it
13:33:42 17 looked as though at one stage he was going to get it and
13:33:46 18 I wasn't about to reprint my 30,000 copies of catalogue,
13:33:53 19 so I didn't see the point and I just called them
13:33:57 20 sheepskin boots. That was the reason that it doesn't
13:34:02 21 mention in there "ugg boots" because of this guy in
13:34:05 22 Australia that was running around saying that he had the
13:34:08 23 name ugg boot and don't use it any more, and, et cetera,
13:34:14 24 et cetera.

13:34:14 25 Q. And that was - the guy who was claiming that,

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13:34:16 1 was that ugh-boots?

13:34:20 2 A. Either. He had, he had registered for either.

13:34:25 3 Q. He had registered both for ugg, U-G-G, and for
13:34:29 4 U-G-H?

13:34:29 5 A. That's correct, yes.

13:34:32 6 Q. And the same guy - can you think of who that
13:34:36 7 was?

13:34:37 8 A. I think - and I wouldn't be too sure and I'm
13:34:39 9 only guessing here - I think it was that Brian Smith.

13:34:42 10 Q. And you think that was in the 1981 time frame,
13:34:45 11 he had those registrations?

13:34:47 12 A. Yes.

13:34:48 13 Q. For both ugg, U-G-G, and ugh, U-G-H?

13:34:54 14 A. Yes, and that's why we didn't put it in the
13:34:57 15 catalogue.

13:35:23 16 MR RAYGOR: I have no further questions of you,
13:35:25 17 with this one caveat, and this is directed to Mr Bagley,
13:35:29 18 we had served a subpoena for these documents.

13:35:33 19 I understand, from the letter that you just served of
13:35:36 20 objections, the objections were served late, therefore,
13:35:40 21 they're waived. Second, they also - the same documents
13:35:47 22 were requested in our document request for production
13:35:50 23 numbers 15 to 23. They should have been produced then.
13:35:54 24 We will be moving to the court for an order to compel the
13:35:55 25 production of those documents, so therefore, I have to

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13:35:57 1 adjourn this deposition at this time because the
13:35:59 2 documents I've requested that be produced before we start
13:36:02 3 these depositions in Australia, be produced. Since I'm
13:36:06 4 here without the documents that I had asked and a court
13:36:11 5 had ordered be produced, and a court order is a subpoena,
13:36:14 6 I'm going to have to adjourn for the present time and
13:36:17 7 move for the court for an order to come back and complete
13:36:20 8 this deposition once I get those documents, and in the
13:36:24 9 course of doing that I will ask that the court pay all of
13:36:28 10 our costs in coming back here to finish this off. With
13:36:32 11 that, I have nothing further, other than if Mr Bagley has
13:36:36 12 a few questions and I may have a few more to follow up.

13 EXAMINATION BY MR BAGLEY:

13:36:39 14 Q. I have just a few follow-up questions on a
13:36:41 15 number of the things that Mr Raygor asked you about.

16 A. Yes, yes, yes, sure. Yes.

13:36:44 17 Q. And hopefully this really will not take too
13:36:46 18 long. He had asked you about your United States stores?

13:36:49 19 A. Yes.

13:36:50 20 Q. And about how the boots were displayed within
13:36:52 21 the stores?

13:36:53 22 A. Yes.

13:36:54 23 Q. And am I remembering correctly that you said
13:36:56 24 that when a boot was displayed on a shelf in your
13:36:59 25 United States stores, it was not in any kind of plastic

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13:37:02 1 bag?

13:37:02 2 A. No, it wasn't.

13:37:12 3 Q. Did - were - when a US customer, when a
13:37:16 4 customer left one of your US stores with a pair of ugg
13:37:21 5 boots, would those - in general, would that pair of
13:37:24 6 ugg boots have been in a plastic bag?

13:37:27 7 A. Yes.

13:37:28 8 MR RAYGOR: Calls for speculation.

13:37:30 9 THE DEPONENT: No, not speculation, it's correct.

10 BY MR BAGLEY:

13:37:32 11 Q. He has made an objection for the record.

12 A. Yes. Yes.

13:37:35 13 Q. How would you know or why do you believe that
13:37:37 14 when a customer left with a pair of boots it would have
13:37:38 15 been in a plastic bag?

13:37:39 16 A. Well, because they were kept in the back in
13:37:44 17 size order and style order in the plastic bag, so,
13:37:56 18 you know, what they had on display was a size range and
13:38:01 19 someone could try them on. Once they established their
13:38:04 20 size then it's only a matter of going out the back, like
13:38:08 21 any other shoe store.

13:38:11 22 Q. And were you ever in your United States shoe
13:38:15 23 stores when sales - excuse me, your United States stores
13:38:19 24 when sales of ugg boots were made?

13:38:21 25 A. Oh, yes, yes.

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13:38:22 1 Q. And did you personally see this happening? Did
13:38:26 2 you see the process of, say, an ugg boot sale happening
13:38:29 3 in your United States stores?

13:38:32 4 A. Yes, well, that's the way it would happen,
13:38:38 5 people would try it on and they're all sizes there, from
13:38:42 6 3 to 11 or 12, and people would try them on. Once they
13:38:47 7 established the right - the size that they wanted and the
13:38:52 8 style that they wanted then they would go out to the back
13:38:55 9 and get them in the plastic bag and say, "There they
13:39:01 10 are."

13:39:01 11 Q. Okay. Thank you. I have a couple of questions
13:39:06 12 on some timing. Actually, maybe - let me just ask this
13:39:10 13 first. When Mr Raygor was asking you some questions
13:39:16 14 about staying on as the manager of Comfort Plus after the
13:39:21 15 US stores were closed - let me think of a good way to ask
13:39:26 16 a good question here. Can we - I'd just like to - it
13:39:34 17 seemed to me in the questioning that the time frame got a
13:39:36 18 little confused there.

13:39:38 19 A. Mmm.

13:39:39 20 Q. So let me re-ask this.

13:39:47 21 VIDEOGRAPHER: 16 minutes of tape.

22 BY MR BAGLEY:

13:39:49 23 Q. Let me ask this. Were you still the owner of
13:39:55 24 Comfort Plus, or at least a partial owner of
13:39:59 25 Comfort Plus, when the US stores were closed?

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13:40:02 1 A. Yes.

13:40:03 2 Q. About how long after the last US store was
13:40:06 3 closed did you sell the remainder, let's say, of interest
13:40:12 4 in Comfort Plus?

13:40:13 5 A. Comfort Plus. Well, it would have been within
13:40:21 6 12 months.

13:40:22 7 Q. Okay.

13:40:22 8 A. Mmm.

13:40:24 9 Q. And just keeping - and I know you've been asked
13:40:27 10 this before but I just want to make sure it's clear.

13:40:29 11 A. Yes.

13:40:30 12 Q. After you sold your interest in Comfort Plus,
13:40:33 13 how long did you stay on as some sort of manager for
13:40:36 14 Comfort Plus?

13:40:37 15 A. Three years.

13:40:38 16 Q. Okay. Thank you. I have some questions about
13:40:49 17 what - let's see if my notes are correct. You described
13:40:52 18 it as a large contraction in the sheepskin footwear
13:40:56 19 industry in Australia. Would I be correct - and I'm
13:41:00 20 going to go back to what I thought you said - that there
13:41:03 21 was a three-year period when sales of footwear went from
13:41:07 22 about 15 million and I didn't write it down, but would
13:41:10 23 that be pairs?

13:41:11 24 A. Yes, 15 million pairs.

13:41:13 25 Q. It went down to about 1 million pairs?

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13:41:15 1 A. Yes.

13:41:16 2 Q. Within a three-year period?

13:41:17 3 A. Within three years.

13:41:19 4 Q. Is that correct?

13:41:20 5 A. That's correct.

13:41:21 6 Q. What years were those, to the best of your
13:41:24 7 memory?

13:41:25 8 A. Well, it was the year that - when I actually
13:41:28 9 finished, when I had served the three years --

13:41:35 10 Q. When you say that, you mean as in manager of
13:41:37 11 Comfort Plus?

13:41:38 12 A. Yes.

13:41:39 13 Q. Okay.

13:41:39 14 A. Yes, when I finished those three years I worked
13:41:44 15 there, so it was between that time. It was while I was
13:41:50 16 still there anyway that I got those figures from the
13:41:54 17 Bureau of Statistics.

13:41:56 18 Q. You got those figures while you were still a
13:41:59 19 manager for Comfort Plus?

13:42:00 20 A. Yes.

13:42:01 21 Q. Okay. Okay, that helps out a little.

13:42:02 22 A. Yes. That's how much it had dropped in that
13:42:05 23 time.

13:42:06 24 Q. Okay, that helps out, because I just wasn't
13:42:09 25 sure what time frame we were talking about there.

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1 A. Yes. Yes.

13:42:13 2 Q. You talked a little bit about a transaction
13:42:19 3 that almost happened with John Arnold?

13:42:22 4 A. Oh, yes, yes.

13:42:24 5 Q. Remind me, what time frame was that again?

13:42:31 6 A. It was when --

13:42:33 7 Q. Was it in the 1970s?

13:42:35 8 A. Well, late '70s --

13:42:36 9 Q. It was in the late '70s.

13:42:41 10 A. -- early '80s.

13:42:43 11 Q. Okay. You had said something about John Arnold
13:42:45 12 telling you that he had a registration for ugg in a
13:42:48 13 drawer?

13:42:49 14 A. Yes. Yes. Yes.

13:42:49 15 Q. What kind of registration did you understand
13:42:51 16 that to be?

13:42:52 17 A. He registered the word "ugg" boot, so he said.

13:42:57 18 Q. Did he make it clear if that was a trademark
13:42:59 19 registration or some other kind of registration?

13:43:02 20 A. Yes, a trademark registration.

21 Q. You thought it was a trademark registration?

22 A. Yes, yes, yes.

23 Q. That's what you understood him to be saying?

13:43:05 24 A. He said he did it years ago --

13:43:06 25 Q. Okay.

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13:43:07 1 A. -- but I don't - when I checked with the
13:43:11 2 Government they had no record of it, or that he may have
13:43:15 3 had it and not renewed it, because nobody was taking any
13:43:21 4 notice, so why renew it, why pay money to renew it, you
13:43:30 5 know.

13:43:30 6 Q. In Australia is there anything else you have to
13:43:33 7 or should register with the Government with respect to
13:43:36 8 your business?

13:43:37 9 MR RAYGOR: Objection. Calls for a legal
13:43:38 10 conclusion. Vague and ambiguous.

11 BY MR BAGLEY:

13:43:41 12 Q. Let me ask you this question --

13:43:42 13 MR RAYGOR: Calls for speculation.

13:43:44 14 MR BAGLEY: Thank you.

13:43:45 15 MR RAYGOR: You're welcome.

16 BY MR BAGLEY:

13:43:47 17 Q. Let me ask you this question. Did you ever
13:43:49 18 register the words "Comfort Plus" in Australia with any
13:43:52 19 government entity?

13:43:53 20 A. Oh, yes.

13:43:54 21 Q. How did you register it?

13:43:56 22 A. Comfort Plus? We registered it as a product
13:44:01 23 name initially and then, I don't know how long
13:44:07 24 afterwards, but after that then we wanted to - we felt
13:44:11 25 that B&H Manufacturing really didn't mean anything to

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13:44:14 1 anybody, so we applied for the registration of the
13:44:20 2 business, Comfort Plus Pty Limited. Comfort Plus Pty
13:44:27 3 Limited bought, or Comfort Plus Australia Pty Limited
13:44:31 4 bought B&H Manufacturing and it stayed like that until a
13:44:37 5 couple of years before I sold and then when Charles Zuker
13:44:44 6 and myself did an exchange of shares between his company
13:44:49 7 and our company, he advised me that we should be looking
13:44:56 8 at putting it through, the name through the family trust,
13:45:03 9 so it then became Bermuda Investments Board Comfort Plus
13:45:09 10 Aust.

13:45:09 11 Q. Okay. I was trying not to cut you off, but
13:45:11 12 there was a lot of information there.

13:45:12 13 A. Yes, I know, yes.

13:45:15 14 Q. I'd like you to go back to something you said.
13:45:16 15 You said you registered it as a business name, is that
13:45:19 16 correct?

13:45:19 17 A. Yes.

18 Q. So is registering --

13:45:21 19 MR RAYGOR: Objection. It mischaracterizes his
13:45:23 20 testimony. He said "product name".

21 BY MR BAGLEY:

13:45:24 22 Q. I understand you said you registered it
13:45:27 23 initially as a product name?

13:45:29 24 A. Yes.

13:45:29 25 Q. Did you also register it later as something

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13:45:31 1 else? After you registered it as a product name --

2 A. Yes.

13:45:37 3 Q. -- did you later register the words

13:45:39 4 "Comfort Plus" as something other than a product name?

13:45:42 5 A. No.

13:45:43 6 Q. Did you ever register it as a business name?

13:45:46 7 A. Yes. Yes.

13:45:49 8 Q. So based on that --

13:45:51 9 A. Different place.

13:45:52 10 Q. Different place. When you say

13:45:54 11 "different place", what do you mean? Are you registered

13:45:56 12 in different places?

13:45:57 13 A. Yes, you do.

13:46:01 14 Q. Where do you register business names?

13:46:03 15 A. Oh, it used to be Corporate Affairs and at

13:46:10 16 Corporate Affairs you didn't register a product name but

13:46:15 17 you registered a business name - Corporate Affairs, yes.

13:46:19 18 Q. Okay.

13:46:20 19 A. Yes.

13:46:21 20 Q. All right. Thank you. And to tie that back,

13:46:24 21 to show I did have a point, when you were talking with

13:46:29 22 John Arnold about his registration of the word "ugg", did

13:46:31 23 he at all make it clear if he mean't a trademark

13:46:34 24 registration or a business name registration?

13:46:34 25 MR RAYGOR: Mischaracterizes the testimony. The

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13:46:36 1 witness did not say that John Arnold had registered

13:46:40 2 "ugg", he said "ugg boots".

13:46:42 3 THE DEPONENT: Yes.

4 BY MR BAGLEY:

13:46:43 5 Q. The same question with the word - inserting the
13:46:45 6 words "ugg boots"?

13:46:46 7 A. Ugg boot, yes. Well, he just said that he had
13:46:50 8 the registration of - he had registered the name ugg boot
13:46:54 9 and he had it in his top drawer and that was - I believe
13:47:01 10 it was just something to make me think, "Well, you know,
13:47:05 11 maybe I should buy his business" and I would have that.
13:47:08 12 I really don't think that he had it, or if he did, if he
13:47:13 13 did all those years ago when he first made them, and I'm
13:47:17 14 not disputing that he was the first that I know of to
13:47:21 15 make the ugg boot, then it was - he may not have renewed
13:47:33 16 it.

13:47:37 17 Q. Okay. I just have a few more questions and
13:47:40 18 we're almost done.

13:47:41 19 A. Yes.

13:47:41 20 Q. I'm going to jump ahead back to your
13:47:45 21 United States stores.

13:47:45 22 A. Yes.

13:47:47 23 Q. You were speaking with Mr Raygor about signs
13:47:48 24 that were in the stores --

13:47:49 25 A. Yes.

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13:47:50 1 Q. -- one of which was the word "UGG BOOTS", in
13:47:52 2 all capitals. Am I remembering that correctly?

13:47:55 3 A. Yes, yes, that's correct.

13:47:56 4 Q. You also mentioned you had, that your stores
13:47:58 5 had some other signs. What were some of the other -
13:48:00 6 could you remind me what were some of the other things
13:48:03 7 that were on similar types of signs in your store?

13:48:07 8 A. Well, there were coats, car seat covers.

13:48:11 9 Q. On that sign would the word "coats" be in all
13:48:15 10 capital letters?

13:48:16 11 A. I think they were all capital letters, from
13:48:18 12 memory, yes. Yes.

13:48:19 13 Q. Okay. Thank you.

13:48:20 14 A. Mmm.

13:48:29 15 Q. I would like you to take a look back at
13:48:32 16 Exhibit number 19. Excuse me, no, it's the Declaration.

13:48:42 17 A. Oh, yes.

13:48:43 18 Q. I'm sorry, 22, I apologise, this is number 22.

13:48:47 19 A. 21. 22, yes, yes.

13:48:51 20 Q. You went back and forth several times about
13:48:53 21 some discrepancies in dates between what was written in
13:48:57 22 this Declaration and what you talked about today. I'm
13:49:00 23 mostly concerned right now about trying to get the right
13:49:03 24 dates, as much as you know, as you sit here today. So I
13:49:07 25 was wondering were there any events in your mind that

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13:49:14 1 tied in or happened near some of these times that would
13:49:17 2 help you nail down when some of these events occurred?

13:49:20 3 MR RAYGOR: Vague and ambiguous as to what you mean
13:49:23 4 by "near".

5 BY MR BAGLEY:

13:49:26 6 Q. Certainly. I am asking about the time -
13:49:29 7 all right, let's say you're selling the business to
13:49:32 8 Charlie Zuker.

13:49:34 9 A. Yes.

13:49:35 10 Q. Is there anything that would help you nail down
13:49:37 11 that date, whether that did happen in 1984 or 1982?

13:49:43 12 A. I think the more I think about it I'm -
13:49:47 13 Charlie Zuker died a short time after we did the deal, it
13:49:53 14 was probably three months, and he came over with his wife
13:50:00 15 to Adelaide, flew over from Melbourne, to see this house
13:50:07 16 that we had moved into on 25 acres, right, and that was
13:50:14 17 1983, right, and that's when he died.

13:50:20 18 Q. Are you fairly certain about that date that
13:50:22 19 Charlie Zuker died in 1983?

13:50:25 20 A. I know what day we moved into the house and it
13:50:27 21 was in September of '83, so these - I think I've got
13:50:33 22 the - in that deposition I've got the breaks of three
13:50:40 23 years and, et cetera, et cetera, right, but I don't think
13:50:48 24 1984 was the correct date that I sold to Charlie Zuker.

13:50:53 25 Q. Okay.

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13:50:54 1 A. So I would more think that it was 1983 and that
13:51:00 2 I ran the business until 1987 - '86, sorry.

13:51:07 3 Q. Okay. Okay. Look, I know we've had a number
13:51:09 4 of years and I realise this was all a long time ago --

13:51:12 5 A. Yes.

13:51:12 6 Q. -- and you've had different answers. I was
13:51:14 7 just trying to refresh your memory.

8 A. Yes. Yes.

13:51:15 9 Q. I was trying to tie it to any events that you
13:51:17 10 might have definitely remembered about?

13:51:19 11 A. Well, I know that we moved into this house in
13:51:23 12 September 1983 and he died in that house the week we
13:51:25 13 moved in.

13:51:25 14 Q. Okay. He died in your house?

13:51:27 15 A. Yes, on the lounge-room floor, mmm.

13:51:29 16 Q. And that was within a week of you moving into
13:51:31 17 that house?

13:51:32 18 A. Yes. Yes.

13:51:34 19 Q. I mean that - okay.

13:51:35 20 A. And the deal for the selling of the business
13:51:38 21 was about three minutes - sorry, was about three months
13:51:45 22 before.

13:51:46 23 Q. Okay. I think I do not have any --

13:51:48 24 A. So if we have to change the deposition, we have
13:51:51 25 to change it. I can't see that --

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13:51:53 1 Q. When you say "deposition", do you mean
13:51:55 2 "declaration"?

13:51:56 3 A. Declaration, sorry.

13:51:59 4 MR BAGLEY: Okay. I have no further questions at
13:52:00 5 this point. You might need to change tapes.

13:52:03 6 VIDEOGRAPHER: Yes, I need to change the tape.

13:52:06 7 MR RAYGOR: Yes. Why don't you go ahead and
13:52:09 8 change.

13:52:09 9 VIDEOGRAPHER: Going off the record at 1.50pm. End
13:52:14 10 of tape 3.

11 (A short break)

13:52:18 12 [1.50pm]

13:56:13 13 VIDEOGRAPHER: Going back on the record at 1.55pm.
13:56:17 14 Commencement of tape 4. Proceed.

15 EXAMINATION BY MR RAYGOR:

13:56:21 16 Q. Mr Bosley, you earlier mentioned
13:56:25 17 Bermuda Investments?

13:56:25 18 A. Oh, yes.

13:56:26 19 Q. And who was - who was Bermuda Investments Pty
13:56:29 20 Limited?

13:56:29 21 A. The Bosley Family Trust.

13:56:32 22 Q. Okay. And you were a director of that?

13:56:35 23 A. Yes.

13:56:36 24 Q. Who is Rogonda Holdings Pty Limited?

13:56:41 25 A. Rogonda?

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13:56:43 1 Q. Rogonda.

13:56:44 2 A. Oh, Rogonda. Yes, that might have been mine
13:56:50 3 too, yes.

13:56:51 4 Q. And you were a director of that company?

13:56:52 5 A. Yes.

13:56:54 6 Q. And what kind of business was that?

13:56:59 7 A. I don't think we ever used it, actually.

13:57:04 8 Q. You don't think it actually ever did anything?

13:57:06 9 A. No.

13:57:06 10 Q. Just a name?

13:57:07 11 A. Just a name, mmm.

13:57:09 12 Q. Scoreboard Promotions Pty Limited?

13:57:12 13 A. Oh, that was after the sheepskin business, yes,
13:57:15 14 Scoreboard Promotions, yes.

13:57:17 15 Q. Was that the screen-print business?

13:57:18 16 A. It was to do with the screen-printing business,
13:57:21 17 yes. It was a separate business, it was advertising
13:57:31 18 signs in hotels.

13:57:33 19 Q. And you were a director of Record Wool Pty
13:57:37 20 Limited?

13:57:37 21 A. Yes.

13:57:39 22 Q. About what years was that?

13:57:43 23 A. Up until I sold - we're looking at '83, yes,
13:57:51 24 about that, '83.

13:58:06 25 Q. Mr Bagley asked you about registering

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13:58:10 1 Comfort Plus. Do you remember that?

13:58:12 2 A. Yes.

13:58:13 3 Q. And you mentioned that it was registered as a
13:58:15 4 product name. Do you recall with what kind of entity or
13:58:19 5 agency you registered that product name?

13:58:28 6 A. No, I don't know exactly. It was a government
13:58:30 7 department.

13:58:32 8 Q. Was it the - do you know what IP Australia is?

13:58:36 9 A. No.

13:58:36 10 Q. It's the Australian Government Trademark
13:58:41 11 Office?

13:58:43 12 A. Maybe, yes.

13:58:46 13 Q. Was it registered with them, do you think?

13:58:48 14 A. Probably, mmm.

13:58:50 15 Q. Was it registered as a trademark?

13:58:52 16 A. No, not as a trademark it wasn't, no.

13:58:56 17 Q. What was --

13:58:57 18 A. It was just registered as a trade name, because
13:59:01 19 there was a company in Sydney making men's trousers who
13:59:07 20 tried to dispute whether we had the right to use the
13:59:12 21 words "Comfort Plus", because that's what they were
13:59:17 22 using.

13:59:19 23 Q. So maybe that's - thinking about it a little
13:59:22 24 bit further now, do you think it was actually registered
13:59:26 25 as a product name or just as a trade name, a trade name

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13:59:28 1 meaning a business name?

13:59:30 2 A. A business name, yes.

13:59:31 3 Q. So do you think maybe it wasn't actually
13:59:33 4 registered as the name of a product?

13:59:35 5 A. Well, no, it was definitely a product because
13:59:38 6 this guy in Sydney that tried to stop us using it failed
13:59:46 7 in his bid because it was registered as a product name --

13:59:54 8 Q. Yes.

13:59:55 9 A. -- with a government department. I couldn't be
13:59:57 10 sure which one it was, but it was with a government
14:00:01 11 department and they took it up for us and told this guy
14:00:05 12 in no uncertain terms that we had registered this a long
14:00:09 13 time before he did.

14:00:10 14 Q. Do you remember the name of the company that
14:00:11 15 you had the dispute with?

14:00:15 16 A. Comfort Plus.

14:00:16 17 Q. Anything else? Was it the same thing,
14:00:20 18 Pty Limited?

14:00:21 19 A. Well, yes, I think they were, yes.

14:00:23 20 Q. Do you remember the name of the individual
14:00:25 21 that --

14:00:26 22 A. No. No. No.

14:00:28 23 Q. And when you register --

14:00:31 24 A. I knew it was something - once it was settled
14:00:32 25 it was out of my mind, you know.

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14:00:34 1 Q. Do you know - so Comfort Plus, when it was
14:00:36 2 registered as the name of a product, was that with a
14:00:39 3 national, I don't know whether you call it Federal here,
14:00:44 4 but a national government agency or a state, like a --

14:00:48 5 A. It was the Federal Government.

14:00:50 6 Q. Federal?

14:00:50 7 A. Yes.

14:00:52 8 Q. Okay.

14:00:52 9 A. So it was Federal.

14:00:56 10 Q. Going back to the first set of supplemental
14:00:59 11 questions that Mr Bagley asked you about - and it's about
14:01:03 12 the plastic bags and the boots, okay?

14:01:05 13 A. Yes.

14:01:05 14 Q. You were mostly - you visited the stores on
14:01:10 15 four or five occasions, right?

14:01:12 16 A. Yes.

14:01:12 17 Q. And these are on four or five different trips
14:01:16 18 to the US?

14:01:17 19 A. Yes.

14:01:18 20 Q. About how long were you in the US on those
14:01:19 21 trips?

14:01:20 22 A. Only a week at a time, mmm.

14:01:23 23 Q. So for the other 51 weeks of the year whoever
14:01:28 24 was managing the store, Garren, or somebody else, would
14:01:31 25 actually be doing sales, right?

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14:01:32 1 A. Well, not 51 weeks, because, you know, I did
14:01:36 2 more than one trip a year.

14:01:37 3 Q. Sure.

14:01:38 4 A. Yes.

14:01:39 5 Q. Okay. So most of the --

14:01:41 6 A. Bear in mind we were only there 18 months, so,
14:01:45 7 you know, once a year would make more than 18 months,
14:01:50 8 wouldn't it.

14:01:51 9 Q. Okay. Well, let's make it a little bit easier
14:01:53 10 on my math. 45 weeks of the year, perhaps, somebody
14:01:56 11 other than you was selling those boots out of the stores,
14:01:58 12 right?

14:01:59 13 A. Yes.

14:01:59 14 Q. And you wouldn't be able to see how they were
14:02:01 15 sold, to whom they were sold or what was sold, right?

14:02:06 16 A. No. Yes.

14:02:07 17 Q. So for those 45 weeks or so you didn't know if
14:02:09 18 they were presented to a customer in a plastic bag,
14:02:13 19 right, you don't have any personal knowledge?

14:02:16 20 A. Well, no, I can't say if I wasn't there, but
14:02:19 21 that, that was the norm, that's how they were stored, or
14:02:23 22 I would just take them out in a plastic bag.

14:02:25 23 Q. Did a customer ever buy a pair there and decide
14:02:28 24 to walk out with them on their feet?

14:02:30 25 A. Maybe they did. I don't know.

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14:02:32 1 Q. You don't know because you weren't there --

14:02:34 2 A. That's right.

14:02:34 3 Q. -- seeing it all the time?

14:02:36 4 A. Yes. Yes.

14:02:39 5 MR RAYGOR: I've got nothing further.

14:02:40 6 MR BAGLEY: And I have no further questions.

14:02:43 7 VIDEOGRAPHER: Okay. Going off the record at

14:02:46 8 2.01pm. End of tape 4. End of videotaped deposition of

14:02:50 9 Roger Bosley. Total number of tapes 4.

14:02:55 10 MR RAYGOR: Before we go off the written record, do

14:03:01 11 you want to do the same stipulation we did the last time?

14:03:05 12 MR BAGLEY: I believe so. Do you remember what it

14:03:07 13 was so you could recite it?

14 14 MR RAYGOR: Sure.

14:03:09 15 MR BAGLEY: I think it was a good stipulation at

16 the time, so let's - if we can --

17 BY MR RAYGOR:

14:03:13 18 Q. It's a little awkward in that - we'll see. We

14:03:14 19 have this thing called Federal Rule of Civil Procedure 30

14:03:18 20 which governs the responsibilities of court reporters in

14:03:22 21 American Federal legal proceedings. What the parties

14:03:25 22 have agreed to, and Mr Bagley and I have agreed to with

14:03:28 23 other depositions, is that when this is all done,

14:03:32 24 Mr Bosley, the court reporter is going to type up

14:03:35 25 everything in black and white in a booklet and give it to

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14:03:38 1 you and you'll get a copy or the original - I think the
14:03:42 2 copy - and you'll have a chance at some period of time in
14:03:45 3 which to make any corrections. Sometimes things like
14:03:48 4 typos, names are misspelled, and I'm sure the
14:03:51 5 court reporter sounds excellent today, but sometimes
14:03:53 6 misses a word here or there, you might have to correct
14:03:56 7 that.

14:03:56 8 A. Yes.

14:03:57 9 Q. I just want to caution you that if you make
14:04:00 10 really substantive changes, like you change a "yes" to a
14:04:05 11 "no", something like that --

12 A. Oh, I see.

14:04:07 13 Q. -- I can comment on it and try to impugn your
14:04:10 14 credibility, that kind of thing.

14:04:12 15 A. Yes.

14:04:13 16 Q. So try to be accurate, but you will have a
14:04:16 17 chance to make corrections and what Mr Bagley and I have
14:04:18 18 discussed is you will be given a certain period of time,
14:04:20 19 I would say 30 days from receipt by you, to make your
14:04:23 20 corrections and sign it.

14:04:24 21 A. Yes.

14:04:26 22 Q. And if we don't receive a signed, corrected
14:04:30 23 copy within those 30 days, then Mr Bagley and I can use
14:04:33 24 an unsigned, uncorrected certified copy for any and all
14:04:38 25 purposes in this proceeding, and with that we would

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1 relieve the court reporter of his duties which, if he
2 were an American court reporter, would otherwise be
3 governed by Federal Law 30.

4 A. Yes.

5 MR BAGLEY: I think that is fair and accurate.

6 MR RAYGOR: Okay, so stipulated.

7 MR BAGLEY: So stipulated.

8 MR RAYGOR: Thank you.

9 (At 2.05pm the deposition concluded)

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CORRECTIONS PAGE

<u>Page No</u>	<u>Line No</u>	<u>Description</u>
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DEPONENT'S DECLARATION

I, _____, hereby declare under penalty of perjury under the laws of the United States that I have read the foregoing transcript and identify it as my own and approve same as a true and correct transcript save and except for changes and/or corrections, if any, as indicated by me on the CORRECTIONS page hereof.

_____, _____, _____,
Date City State

Signed: _____

REPORTER'S CERTIFICATE

I, JAMES EDWIN BERMAN of DTI Global do hereby certify that the foregoing testimony was recorded by me stenographically and thereafter transcribed by me, and that the foregoing transcript constitutes a full, true and accurate record of said examination of and testimony given by said witness, and of all other proceedings had during the taking of said deposition, and of the whole thereof, to the best of my ability.

I further certify that I am not a relative, employee or counsel of any of the parties of the within cause, nor am I an employee or relative of any counsel for the parties, nor am I in any way interested in the outcome of the within cause.

Signed _____ Dated _____